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RELEVANT DOCKET ENTRIES

- February 20, 1970 - Complaint in Equity filed; returnable March 22, 1970.
- February 24, 1970 - Affidavit of Service filed.
- March 5, 1970 - Answer of defendant filed.
- May 12, 1970 - Issue granted, No. 74624.
- June 29, 1970 - Defendant's Interrogatories to plaintiffs filed.
- July 24, 1970 - Plaintiffs' Answers to Interrogatories filed.
- August 3, 1970 - Order filed.

So die, It is ordered and decreed that trial of the within captioned action, presently scheduled for Monday, August 3, 1970 be and the same hereby is continued to 15th day of September, 1970, at 9:30 o'clock A.M.

- February 2, 1971 - Transcript of proceedings filed.
- March 3, 1971 - Findings of Fact and Conclusions of Law filed.
- March 19, 1971 - Order filed.

So die, It is ordered, adjudged and decreed that the action in equity filed by the plaintiffs to enjoin the operation of Ordinance No. 704 of 1969, the Parking Tax Ordinance of the City of Pittsburgh, be and the same is hereby dismissed. It is further Ordered and Decreed that if no exceptions are filed hereto within twenty (20) days of notice of filing this adjudication, the decree nisi shall be entered by the Prothonotary upon praecipe as a final decree herein in accordance with Rule of Civil Procedure No. 1519(a).

- April 5, 1971 - Exceptions to Decree Nisi filed.
- July 14, 1971 - Order filed.

Ec die, It is further Ordered that the cost of this proceeding shall be borne by the plaintiffs and the decree nisi dated March 19, 1971, shall be entered as a final decree herein.

Docket Entries

- August 10, 1971 - Certiorari from Commonwealth Court of the Matter of the appeal of Alco Parking Corp.; et al.
- June 8, 1972 - Opinion and Dissenting Opinion of Commonwealth Court filed.
- June 18, 1972 - Petition for Reargument filed.
- June 29, 1972 - Order.
- Now, June 29, 1972 it is hereby ordered that the above appeal be reargued and for this purpose shall be listed on the September argument list at Harrisburg on a date to be hereafter fixed and notice thereof given to the parties. Bowman, P.J.
- August 11, 1972 - Order setting Monday, September 11, 1972, as date for reargument and further granting permission to appellants to file a Supplemental Brief, appellee to file a Supplemental Brief on or before September 8, 1972.
- September 1, 1972 - Petition for Oral Argument made by Leonard M. Marks; Gold, Farrell & Marks, New York, N. Y.
- October 10, 1972 - Opinion and Dissenting Opinion of the Commonwealth Court after reargument.
- November 6, 1972 - Petition for Allowance of Appeal filed, Supreme Court of Pennsylvania.
- November 14, 1972 - Answer to Petition for Allowance of Appeal filed, Supreme Court of Pennsylvania.
- January 22, 1973 - Reply to Answer of the City of Pittsburgh to Petition for Allowance of Appeal
- January 25, 1973 - Order of the Supreme Court of Pennsylvania:
Petition granted
Per Curiam
- February 2, 1973 - Appeal from Commonwealth Court Order filed and docketed in Supreme Court of Pennsylvania and listed for argument on March 12, 1973.
- February 15, 1973 - City of Pittsburgh's Motion to Quash Appeal filed.
- February 21, 1973 - Answer of appellants to appellee's Motion to Quash Appeal filed.

Docket Entries

3a

February 26, 1973 - Petition for Oral Argument on behalf of Meyers Bros. Parking Central Corp. filed.

March 13, 1973 - Order of the Supreme Court entered.

And Now, March 13, 1973, the within petition of Leonard M. Marks, Esq., to appear and make oral argument on the side of appellants is hereby granted, the length thereof to be determined at the time of hearing. Per Curiam.

July 2, 1973 - Opinion and Dissenting Opinions of the Supreme Court.

July 12, 1973 - Petition for Reargument filed.

July 25, 1973 - Answer to Petition for Reargument filed.

August 10, 1973 - Order of the Supreme Court.

Denied Per Curiam
Mr. Justice Eagen dissents.

Complaint.**(Filed February 20, 1970.)**

AND Now come the plaintiffs above named, by their attorneys, Leonard Boreman, Richard H. Martin and Baskin, Boreman, Sachs, Gondelman & Craig, and claim damages of the defendant above named, upon a cause of action whereof the following is a statement:

1. Plaintiffs are the owners and/or lessees of parking lots and parking garages situate in the City of Pittsburgh, County of Allegheny and Commonwealth of Pennsylvania, comprising a total of 19,886 parking spaces throughout the City of Pittsburgh.

2. Defendant, City of Pittsburgh, is a city of the Second Class; organized under the laws of the Commonwealth of Pennsylvania and is situate in Allegheny County.

3. On or about December 31, 1969, the defendant, City of Pittsburgh, by its duly elected City Council, pursuant to Act No. 511 of 1965, and its amendments, enacted Ordinance No. 704, Parking Tax Ordinance (hereinafter referred to as "Ordinance"), effective February 1, 1970, a copy of which is attached hereto, made part hereof and marked Exhibit "A".

4. By the provisions of the Ordinance, defendant imposed a tax upon all parking transactions of all operators engaged in the parking or storing of motor vehicles at non-residential parking facilities in the City of Pittsburgh, at the rate of twenty per cent (20%) per annum of the gross receipts from all such transactions during the year 1970, and thereafter from year to year.

5. Said Ordinance violates the Fourteenth Amendment to the Constitution of the United States and the Constitution and laws of the Commonwealth of Pennsylvania and is, therefore, illegal and invalid, as more particularly set forth in the following lettered paragraphs:

- a). The Ordinance imposing a tax of twenty per cent (20%) per annum of the gross receipts of plaintiff parking operators is excessive and confiscatory, as it precludes said plaintiff parking operators from making a reasonable profit on parking transactions and, therefore, amounts to a taking of plaintiffs' property without due process of law.
- b). The Ordinance imposing a tax of twenty per per cent (20%) per annum of the gross receipts of plaintiff parking operators, when added to the real estate tax on land and buildings and the six mill tax on their gross receipts pursuant to the Business Privilege Tax of the City of Pittsburgh, all of which are imposed by and must be paid annually to defendant, is excessive and confiscatory, as it precludes said plaintiff parking operators from making a reasonable profit on parking transactions and, therefore, amounts to a taking of plaintiffs' property without due process of law.
- c). The Ordinance imposing a tax of twenty per cent (20%) per annum of the gross receipts of plaintiff parking operators works an unreasonable hardship upon said plaintiffs and is discriminatory when measured against the tax burdens of the City of Pittsburgh and the Public Parking Authority of the City of Pittsburgh since competing parking facilities

owned and operated by the Public Parking Authority of the City of Pittsburgh are exempt from all real estate taxes, and competing parking facilities owned and operated by the City of Pittsburgh are exempt from both the Business Privilege Tax and all real estate taxes, as well as the parking tax imposed by the Ordinance, while plaintiffs herein are required to pay substantial amounts of money to the City of Pittsburgh in the form of real estate taxes and the tax on gross receipts pursuant to the City of Pittsburgh Business Privilege Tax, in addition to the twenty per cent (20%) per annum tax on their gross receipts on parking transactions imposed by the Ordinance and are, therefore, denied the equal protection of the law.

- d). 1). The Ordinance imposing a tax of twenty per cent (20%) per annum on the gross receipts of plaintiff parking operators is further discriminatory and a denial of the equal protection of the law since the Public Parking Authority of the City of Pittsburgh and other Public Authorities owning and operating parking facilities in the City of Pittsburgh are, under the Constitution of the Commonwealth of Pennsylvania and the law as determined by the Supreme Court of Pennsylvania, exempt from all taxes, including the tax

imposed by the Ordinance, while plaintiffs herein are made subject to the tax imposed by said Ordinance.

- 2). The exemption from all taxes of the Public Parking Authority of the City of Pittsburgh and other Public Authorities owning and operating parking facilities in the City of Pittsburgh, as aforesaid, renders the tax imposed by the Ordinance against plaintiffs herein, who do not operate parking lots or parking garages under leases from the Public Parking Authority of the City of Pittsburgh, invalid and illegal, under the Constitution of the Commonwealth of Pennsylvania and the law as established by the Supreme Court of Pennsylvania, since said tax lacks uniformity upon the same class of subjects.
- e). The Ordinance imposing a tax of twenty per cent (20%) per annum of the gross receipts of plaintiff parking operators works an unreasonable hardship upon said plaintiffs and is discriminatory when measured against the tax burdens of other businesses located within the City of Pittsburgh, and as such denies plaintiffs equal protection of the law, since many other businesses, because of their relationship to traffic congestion and other characteristics, present problems requiring

municipal services and affect the public interests to the same degree and extent as non-residential parking facilities, but are, unlike plaintiffs herein, required only to pay real estate taxes and the Business Privilege Tax.

- f.) The Ordinance imposing a tax of twenty per cent (20%) per annum of the gross receipts of plaintiff parking operators constitutes double taxation of the business of parking motor vehicles since the Business Privilege Tax and the Parking Tax Ordinance both are excise taxes imposed on the same gross receipts received by plaintiffs herein from the operation of their parking facilities.

6. The Ordinance imposing a tax of twenty per cent (20%) per annum upon gross receipts of transactions involved in parking motor vehicles at non-residential parking facilities will add to the already serious problem of traffic congestion and lack of adequate off-street parking facilities in the City of Pittsburgh since said tax makes the building of additional parking facilities by private owners and operators, such as plaintiffs herein, impossible because of an unwillingness on the part of lending institutions to commit funds to such projects and because of the impossibility of making a reasonable profit from the operation of said facilities, all of which is contrary to the public policy of the Commonwealth of Pennsylvania as established by the Parking Authority Law, the Act of 1947, June 5, P. L. 458; 53 P. S. 318 *et seq.*

7. The orderly operation, and in many instances the existence, of parking facilities in the City of Pittsburgh would be seriously and adversely affected by the application of City of Pittsburgh Ordinance No. 74 to plaintiffs herein.

8. Plaintiffs are without an adequate remedy at law.

9. Plaintiffs will suffer irreparable harm if the City of Pittsburgh Ordinance No. 74 is permitted to be enforced and applied against the plaintiffs herein.

WHEREFORE, plaintiffs, being without an adequate remedy at law and being in need of immediate relief, pray your Honorable Court for the following relief:

- a). That the defendant be enjoined and restrained from enforcing the provisions of Ordinance No. 74, effective February 1, 1970, against the plaintiffs.
- b). That the defendant be enjoined from attempting to subject plaintiffs herein to arrest and penalties, as well as civil suits, for the collection of any alleged tax liability.
- c.) That the defendant be restrained from imposing a License Tax under the Ordinance for the parking facilities operated by plaintiffs.
- d). That this Honorable Court order the refund of any taxes paid as a result of the enforcement of Ordinance No. 74, together with interest thereon.

- c). That the Court grant such other and further relief as it deems just and proper.

LEONARD BOREMAN,
RICHARD H. MARTIN,
BASKIN, BOREMAN, SACHS,
GONDELMAN & CRAIG,
Attorneys for Plaintiffs.

Exhibit "A"

Ordinance No. 704 (printed in the
Appendix to the Petition for Car-
tiorari at pages 103a through 110a)

**Answer of Defendant to Complaint
in Equity.**

(Filed March 5, 1970.)

AND Now comes the defendant, by its undersigned counsel, and avers that it has a full, true, just and complete defense to the Complaint in Equity in the above-entitled case, which defense, insofar as it is required to be stated, is as follows:

1. The averments of Paragraph 1 are admitted in part and denied in part.

It is admitted that the plaintiffs are the owners and/or lessees of parking lots and parking garages situate in the City of Pittsburgh.

As to the averment that the lots owned and/or leased by the plaintiffs comprise a total of 19,886 parking spaces, defendant is without knowledge of the truth or falsity of the averment, the means of proof thereof being exclusively in the possession and control of the plaintiffs, and therefore denies the same and demands strict proof thereof at the time of trial.

2. The averments of Paragraph 2 are admitted.

3. The averments of Paragraph 3 are admitted.

4. The averments of Paragraph 4 are admitted.

5. The averments of Paragraph 5 state conclusions of law for which no answer is required.

6. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 6. Moreover, it is denied that any of the averments of Paragraph 6 are material to any of the issues in this case.

7. After reasonable investigation, defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 6. Moreover, it is denied that any of the averments

14a *Answer of Defendant to Complaint in Equity.*

of Paragraph 7 are material to any of the issues in this case.

8. The averments of Paragraph 8 states a conclusion of law for which no answer is required.

9. It is denied that plaintiffs will suffer irreparable harm if the City of Pittsburgh Ordinance No. 74 is permitted to be enforced and applied against the plaintiffs herein. On the contrary, it is averred that all those receiving the benefit of municipal services must share the burden of supporting them. In any event, even if it is eventually held that the Parking Tax Ordinance is unenforceable, plaintiffs will have suffered no irreparable harm because any money paid will be refunded.

WHEREFORE, defendant avers that the Parking Tax Ordinance is a reasonable and necessary enactment under the authority of Act No. 511 of 1965, and requests that the prayers of the Complaint be denied, and that the Complaint be dismissed with the costs to the plaintiffs.

FREDERICK A. BOEHM,
First Assistant City Solicitor,

RALPH LYNCH, JR.,
City Solicitor,

Attorneys for Defendant.

Commonwealth of Pennsylvania, }
County of Allegheny. } ss.:

Before me, the undersigned authority, personally appeared RALPH LYNCH, JR., who, being duly sworn according to law, deposes and says that he is the duly appointed City Solicitor for the City of Pittsburgh; that he has authority to execute the foregoing Answer of Defendant to Complaint in Equity and this Affidavit on its behalf, and that the averments set forth in said Answer are true and correct to the best of his knowledge and information or belief.

RALPH LYNCH, JR.

Sworn to and subscribed before me this 4 day of March, 1970.

(SEAL) AGNES L. McDONOUGH,
Notary Public,
Pittsburgh, Allegheny County, Pa.
My Commission expires September 22, 1973.

CIVIL DIVISION

- - -

Alco Parking Corporation; Arena)
Parking, Inc.; Campus Parking,)
Inc.; Fourth Avenue Parking,)
Inc.; Grant Parking, Inc.; Harry)
Sheppard, Jr., t/a Stanwix Auto)
Park; John Cominos, t/a Liberty)
Parking; John Stabile and Rocco)
A. Del Sardo, t/a William Penn)
Parking Lot; K-Seven Parking)
Company; Meyers Brothers Parking-)
Central Corp.; Parking Service)
Corporation, Inc.; William Penn)
Parking Garage, Inc.,)

No. 1699 April Term, 1970
In Equity

Plaintiffs,)

vs.)

City of Pittsburgh,)

Defendant.)

- - -

TRANSCRIPT OF PROCEEDINGS

BEFORE: Hon. Arthur Wessel, Jr., J.

- - -

September 15, 1970

September 16, 1970

September 17, 1970

- - -

Appearances

(2) 17a

A P P E A R A N C E S

- - -

LEONARD BOREMAN, Esq., and RICHARD H. MARTIN, Esq.,
of the firm of Baskin, Boreman, Sachs, Gondelman and Craig,
1018 Frick Building, Pittsburgh, Pennsylvania, 15219, appearing
on behalf of the Plaintiffs.

LEONARD M. MARKS, Esq., of the firm of Steel, Cohen,
Gold, Farrell and Marks, 745 Fifth Avenue, New York, New York,
10022, appearing on behalf of Meyers Brothers Parking.

FREDERICK A. BOEHM, Esq., and GRACE S. HARRIS, Esq.,
appearing on behalf of the City of Pittsburgh.

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13a(4)

H. W. Shepard, Jr. - Direct

SEPTEMBER 15, 1970

Tuesday Morning Session.

- - -

HARRY W. SHEPARD, JR., called as a witness on behalf of the Plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BOREMAN:

Q State your name.

A Harry W. Shepard, Jr.

Q Where do you live, Mr. Shepard?

A 670 Valley View Road, Mt. Lebanon, Pennsylvania.

Q What is your occupation?

A I own and operate parking facilities.

Q Under what name?

A Stanwix Auto Park, Stanwix Parking.

Q This is in the City of Pittsburgh?

A It is in the City of Pittsburgh.

MR. BOEHM: Wasn't there another one?

THE WITNESS: Stanwix Parking, Incorporated, which is an owner of parking facilities.

BY MR. BOREMAN:

Q Stanwix Auto Park is individually owned as an individual proprietorship by you?

By me.

What other activities in the City of Pittsburgh do you engage in with relation to parking?

We also manage parking facilities for Horne's Garage, for Gimbels. We lease a facility on Fourth Avenue.

Just a moment. When you say "we," do you mean you individually or your corporation?

I'm using the collective term for my company. It means Stanwix Auto Park as an operator-manager.

Go on.

On Forbes Avenue we also operate another parking facility and on Fort Pitt Boulevard.

Are these parking lots or parking garages?

Fort Pitt Boulevard, Fourth Avenue, Forbes Avenue are parking lots. The others are all garages.

When you said you operate a parking facility for Horne's and Gimbels, will you explain what that is?

Horne's has leased a parking facility from the Parking Authority. We are operator-managers of that garage. It's a management contract or a lease. The same is true of Gimbels. Gimbels leases a garage from the Parking Authority; we manage it for them. We provide the personnel, pay the help, take care of the place.

And your compensation so far as the Horne's and Gimbels

20a(6) H. W. Shepherd, Jr. - Direct
operation is as a management fee?

A Yes.

Q Horne's is the lessee of the Parking Authority and Gimbels
is the lessee of the Parking Authority?

A That's correct.

THE COURT: What was that other parking
authority that you mentioned?

THE WITNESS: Horne's and Gimbels.

THE COURT: There was Forbes Avenue, Fourth
Avenue; and what was the other one?

THE WITNESS: Fort Pitt Boulevard. These are
parking lots.

BY MR. BOREMAN:

Q These do not belong to the Parking Authority, these are your
own lots that you operate?

A These are ones that I have under lease.

Q And operate?

A And operate.

Q Is there any facility in which you own the land and
building which contains a parking facility?

A Yes, sir, as a stockholder of Stanwix Parking, Incorporated,
that owns a parking garage directly across the street from
Horne's. I am the majority stockholder in that corporation,
and Stanwix Auto Park as the management company operates

R. W. Shepard, Jr. - Direct

(7)21a

that facility for the corporation.

How long have you been in the parking business, Mr. Shepard?

Oh, I was in the parking business with my father along about 1937, '38, since I was about 17 years old. And aside from war service, why, continuously in that business.

What activities have you engaged in in connection with the parking industry?

Oh, I have been for 14 years a director of the National Parking Association and was President of it for two terms. This is an association of largely private parking operators, about 4,000 parking operations.

Throughout the United States?

Throughout the United States and also in European countries. We have members in Japan, Mexico and in Europe.

You were President of that association for two years?

Yes, sir.

What years?

They were 1954 and 1955.

Do you operate any parking facilities outside of the City of Pittsburgh?

Yes, sir.

What are they?

I operate in Tucson, Arizona and Tallahassee, Florida.

Have you appeared at any meetings or panels or educational

22a(8)

H. W. Shepard, Jr. - Direct

symposiums of parking people?

A Oh, yes, sir. I have been frequently called upon to make speeches before Chambers of Commerce. I am a member of the Transportation Committee of the United States Chamber of Commerce, member of the subcommittee on policy which concerns itself with highway use and parking, among other things. I've appeared before the Oklahoma City Chamber of Commerce, the Seattle Board of Trade, the Metropolitan Board of Trade in Washington, D. C. I will appear on a panel in Baltimore later in this month.

Q Now, in the course of the preparation of this case did I call upon you to furnish your books and records disclosing the employees' revenue and operating expenses of the parking operations in Pittsburgh that you operate?

A Yes, you did.

Q And did you furnish them?

A I furnished these records taken directly from our books by our accountant who happens to be a C.P.A.

Q To whom did you furnish them?

A To Mr. Buzzard.

Q Who is he?

A Mr. Buzzard is a research expert, to my knowledge. He compiles this sort of information. He works for Mr. McNeil who is a recognized parking and traffic consultant.

H. W. Shepard, Jr. - Direct

(9)238

And the figures that you furnished him were taken from your books and records, and you are familiar with the compilations made for the purpose of this case, are you not?

Yes, sir.

Would you say that the figures in that compilation are true and correct?

I would say so.

And taken from your books?

Yes, sir. They were taken directly from our books.

From audited statements of your books?

We do not perform an audit, as such; but our accountant is fully qualified as an auditor.

Now, Mr. Shepard, as an operator of parking facilities in the City of Pittsburgh, will you tell us in what way these parking facilities affect congestion, traffic problems, in the downtown area?

They certainly relieve congestion. As a matter of fact, the whole concept of a parking operation is to relieve congestion. Shopping centers, department stores, all major facilities need parking today to stop people from crowding the streets in front of them. The lack of parking, the lack of getting -- the lack of parking leaves cars on the street. A parking garage takes them off the streets. Congestion in the City of Pittsburgh would be terrible if they did not

24a(10)

H. W. Shepard, Jr. - Direct

have the parking facilities we have today. It's pretty bad now because we don't have enough. And Wilbur Smith made a recent study for the Parking Authority to prove we don't have enough.

MR. BOEHM: I object to this testimony, Your Honor. This is hearsay as to what Wilbur Smith's study showed.

THE COURT: We will sustain your objection with respect to that last phrase and strike that from the record as being hearsay.

(EXCEPTION NOTED)

BY MR. BOREMAN:

Q Tell us, Mr. Shepard, how about in the operation of your parking facilities downtown such as your Stanwix Auto Park Garage and Horne's and Gimbels, does the operation of those garages clog up the streets?

A No, sir, the operation does not. They are specifically designed to prevent that. As a matter of fact, even a bad operation takes cars off the streets because nobody goes anywhere to park. They come downtown to do something else entirely. They come to shop at Horne's, and if they come to shop at Horne's and there's no place to park you have congestion. If they come to the City-County Building to attend a court case and there is no place to park, they are

in the street and it creates congestion.

Now about in high peak periods such as the morning when people are all pouring into town to their offices or at night when they go out; does the ingress and egress to and from the parking garages cause congestion?

Not at all. It relieves it. At that time the situation is even more as I described. The heavier the traffic on the street, the more you need places for the cars to go. This is the reason why in suburban shopping centers they build acres and acres of parking.

As an operator in downtown Pittsburgh have you asked for and received additional police protection or other services? I haven't asked for it because we haven't needed it. I've noticed a particular lack of it in traffic control lately, however.

What do you mean by the lack of it?

Well, it seems to me we used to have a lot of policemen in town and now we have substantially fewer.

Is there a policeman stationed in front of any of your garages for the specific purpose of regulating traffic in your garage?

No, sir. There is a policeman stationed at either end of a block nearby, nothing to do with the garage. We have no lines in the street. If we did it would still be a matter

26a(12) H. W. Shepard, Jr. - Direct

of taking people off the street, they would still be on the streets if we didn't have the garage.

Q But you don't have any lines?

A We do not have any lines, no, sir.

Q By the way, Mr. Shepard, talking before about your qualifications, I think you are actually a member of a parking authority, are you not?

A I'm a member of the Mt. Lebanon Parking Authority, yes, sir.

Q What does that do?

A The Mt. Lebanon Parking Authority built two garages.

MR. BOEHM: I object to this testimony, Your Honor. I don't see how it can be relevant to this case.

MR. BOREMAN: I want to show that this man is a highly experienced competent parking operator who is extremely familiar with the whole parking industry and traffic situations in this area.

MR. BOEHM: I have no objection to that.

MR. BOREMAN: I want to show that he is not only familiar in his own business and in all the panels and all the offices he has held, but even Mt. Lebanon has put him on the Authority, and I am going to ask him why.

MR. BOEHM: The only objection I have is to

his testifying as to what Mt. Lebanon has done in the way of building parking garages. I don't see how that could affect the problem in the City of Pittsburgh.

THE COURT: For the purpose of which counsel has suggested to you to qualify the witness, we will permit that testimony.

MR. BOREMAN: I want to say also that I think the purpose of why Mt. Lebanon or any other municipality built garages is relevant here. Our point is to show you have these garages to take away the congestion and relieve the situation.

THE COURT: We will confine that to the City because it is the City Ordinance that is involved as distinguished from outlying districts.

MR. BOREMAN: Will you read the question?

THE REPORTER: (Reading) "Question: By the way, Mr. Shepard, talking before about your qualifications, I think you are actually a member of a parking authority, are you not?

"Answer: I'm a member of the Mt. Lebanon Parking Authority, yes, sir.

"Question: What does that do?

"Answer: The Mt. Lebanon Parking Authority

26a(14)

H. W. Shepard, Jr. - Direct
built two garages."

MR. BOREMAN: I think we can leave it there.

THE WITNESS: The Mt. Lebanon Parking Authority

MR. BOEHM: Excuse me, Your Honor. He has to
ask a question first and then get the answer rather
than having the witness volunteering information.

BY MR. BOREMAN:

Q What are the responsibilities of the Mt. Lebanon Parking
Authority?

A To manage and operate parking facilities, to create new
facilities as the occasion demands. The Authority was
created to relieve traffic congestion and to protect the
tax base in the area. If there were no places to park,
people would not come to the area and as a consequence
it would decline in value. This is one of the few parking
authorities who have acting parking operators on it, and I
serve not because I feel that a parking authority is the
proper way to do it, I would rather see private enterprise
do it, but I serve because I think it's the responsibility
of a citizen to provide expert management where he can in
his locality.

(Plaintiffs' Exhibit No. 1 was marked for the
purpose of identification.)

MR. BOREMAN:

I show you what has been marked for identification as Plaintiffs' Exhibit 1 and ask you to state what that exhibit is.

This is data pertaining to the parking operations of the Plaintiffs in the Pittsburgh Parking tax case.

Now, in Exhibit 1 is a tab marked Stanwix Auto Park, and I show you that tab and ask you what Stanwix Auto Park and the data following that tab mark is. What is it?

Stanwix Auto Park is the company which I own, and the data which appears in here has been extracted from our books as being the correct operating figures of our various facilities. Have you examined the data in this book with respect to your company, Stanwix Auto Park?

Yes, sir, I have.

Are the figures contained therein taken from your books and records?

They are taken from my books and records.

Are the figures contained therein true and correct as shown by your books and records?

Yes, sir.

Now, Mr. Shepard, it has been said that the parking tax which is involved in this case has really no effect on the profitability of your business because it can be passed onto

30a(16) H. S. Shepard, Jr. - Direct
the customer.

A That's ridiculous.

Q Will you tell us about that? Can it be passed onto your customers?

A No, sir, it cannot be passed onto our customers. That statement has been made many times and it's an absolute fallacy. The only place that this money can come from is out of the operating profits of the corporation, if they happen to exist. You cannot pass it on. A parking rate is determined by the usage in the area and the demand in that area, and just because the City passes an ordinance raising the parking tax doesn't mean you automatically raise the rate. That would be silly. Why wouldn't you get that rate before?

Q What do you mean by that?

A Well, if you could get a dollar for parking, you don't need the City to tell you to raise it from 75 cents to a dollar. If you can get a dollar for it you should get it. If it's a fringe parking area there are only certain prices people pay in a fringe parking area. If it's a downtown turnover location, you can drive customers away by raising the rate. We have adjusted the rates, but we haven't done it because of the tax. We've adjusted it because of the business situation that existed.

H. W. Shepard, Jr. - Direct

(17)31a

When the parking tax was first introduced in 1963 and made 10 per cent, did you increase your rates to meet that 10 per cent tax?

We did not increase them to meet the 10 per cent tax.

What did you do?

We adjusted some rates. We did not adjust them all upward.

We adjusted some downward. We had to adjust the rates at that time to confine the operations, say, at the Stanwix Garage, this is a good example, so that we would provide parking for shoppers.

And don't forget, when you provide parking for shoppers, they can park free, they don't pay for it out in the shopping center. Now, if we charged a dollar for the first hour at that time it would have been ridiculous. You couldn't have gotten a person to come into the garage. Now we charge 75 cents.

You are both a private operator and an operator for lessees of parking authority garages, are you not?

Yes, sir.

So you are familiar with both operations?

Yes, sir.

Except for the rates that are charged by either place, is there any difference in a parking authority operation and a private operator operation?

32a(18)

H. W. Shepard, Jr. - Direct.

A As far as the purposes are concerned, no.

Q I mean in parking cars is there any difference?

A No, there's no difference.

Q The operation is the same, it performs the same function, doesn't it?

A Yes, sir.

Q You are familiar with the rates that you charge in parking authority garages such as Horne's and Gimbels, and you are familiar with the rates that you charge as a private operator?

A Yes, sir.

Q Is there any difference?

A Yes, there is a difference. Again, it's purely because of the business situation.

Q Which is higher, your rates or the Parking Authority?

A My rates are higher.

Q Can you tell us how much higher?

A It could be as high as, for an all day parker, a dollar.

Q A dollar higher?

A Yes, sir.

Q How about a one-hour parker?

A It could be 40 to 45 cents higher for a one-hour parker.

Q In terms of percentage, what would that be?

A The average check is nothing like that. This is where you get confused about rates. We have our rates geared to

provide for parking for as many customers as we can possibly use in the facility. In other words, we are providing for the short-term parker.

The Authority rates, since they don't pay any real estate taxes, have been kept low; and as a matter of fact, they have been filling up most of the day, completely contrary to what their original purpose was.

You mean you have all-day parkers?

They get many all-day parkers. Recently Gimbels' garage, the Parking Authority raised the all-day rate and as a consequence flushed out some of the all-day parkers.

Nothing to do with the parking tax, it was just because the purpose of the building was prostituted to an all-day parker. In other words, Gimbels and Horne's and Kaufmann's want short-term parkers, not all-day parkers?

Why, certainly. They are geared for that, those cars or people that come in and shop in the store; and the all-day customer keeps them out. We call them roosters in the trade.

In view of the difference in rates between the Parking Authority garages and your garages, will you tell us, is it feasible for you to raise your rates now to meet this tax?

I cannot raise the rates now. If I could raise the rates to meet this tax that's been in effect since February, I would have. I do not feel that I would accomplish anything

34a(20)

P. M. Shepard, Jr. - Direct

but drive my customers away if I raise my rates at this time

Q What experience do you have to tell us whether or not raising rates to a great degree as might be required by this parking tax would drive customers away?

A I've been in this business for 33 years. I can't take the chance on driving them away. I have a feeling for this business, I know the business, I've been consulted as an expert in this business. There is only so much money you can charge. I have a Parking Authority garage on the other side of Horne's Department Store that competes directly with me, doesn't pay any real estate taxes. If I drive my customers away I'm in double trouble.

Q So, Mr. Shepard, what is your opinion as to whether this parking tax can be passed on?

A The parking tax can never be passed on. That is silly. You are charging the rate that you think is the best one for you right at that time. If you raise that rate you either drive customers away or you change the character of the business. And there's been no evidence at all that there's -- all you have to do is pass an ordinance to raise parking rates. We have competition from all of the shopping centers around here. I think these taxes and the high cost of parking in the City are driving people out of the City. I think that's evident. All you have to do is look at the

H. W. Shepard, Jr. - Direct

(21)35a

census figures and you can see what is happening to the City. Look at its tax base. This is part and parcel of it.

Mr. Shepard, I am going to show you what has been marked Exhibit 1, and I am showing you the portion that you have identified as the figures taken from your books and records.

Now, would you with respect to the Stanwix Garage -- and I think that is the one that you own individually, is that right?

Yes, sir.

Where is that located?

Corner of Fort Duquesne Boulevard and Stanwix Street directly across the street from Horne's Department Store.

With respect to Stanwix Garage, what does that show as to the trend of your profit for the years 1968-1969, and what is the projection for 1970?

MR. BOEHM: Excuse me. I would like to place an objection on the record, Your Honor, to this testimony in that it violates the best evidence rule. It's hearsay. That is a compilation of figures that was taken from his original records. The original records are the best evidence, and, therefore they must be produced in this court in order to be admissible.

THE COURT: The witness has testified that he

knows his own records and that those figures were taken from those records and that they are accurate. We will put it this way, however, should counsel for the Defendant desire those records for the purpose of his case, we will direct that they be presented; but in the meantime, the Court will hear the testimony with respect to what records or copies of records have been presented here in court in the form of this particular exhibit.

MR. BOEHM: I would like to make that request right now, Your Honor.

THE COURT: Very well.

MR. BOREMAN: Before we go any further, is counsel asking us that we bring all our books and records into this courtroom? I would say that this is a tremendous imposition. We will make available to counsel -- he can, he or any of his office staff come to the place of business and examine all the books and records we have thoroughly. I think for us to bring the books and records into this courtroom is quite an imposition.

MR. BOEHM: All I am interested in seeing, Your Honor, is what must be available, a financial statement for the years that he is talking about.

that is all I need, the kind of financial statement that his accountant mails to the firm every year showing what his financial position is.

MR. BOREMAN: We will be glad to make available to counsel or any of his staff and we will furnish our people to work with him and give them every bit of books and records we have, and then he can question whether it is accurate or correct or not.

I might say this, Your Honor, you take Alco Parking Corporation, as you will see from that book there are about, I think, ten facilities in there; and the accountant who makes up the statement doesn't make a separate statement for each individual lot. He makes a corporate statement, and it was necessary for Mr. Buzzard together with the controller to sit down and glean out the revenue from that one lot which they have on their books and records but doesn't appear as an individual item on the statement. And to allocate matters like insurance where a policy covers maybe ten or twenty or thirty or forty lots, to allocate insurance to that and pension payments based on wages allocating it and office rent, there are various allocations where Mr. Buzzard is going to explain how he did it. He has a right --

THE COURT: To cut this short, as we said before, we will give counsel the opportunity to examine or copy or have copied whatever records he feels are appropriate for the purpose of your side of the case. We are going to put the burden on you to decide what you want.

MR. BOEHM: That is what I am trying to tell him, Judge. Suppose that Mr. Shepard has an accountant which gives him a financial statement at the end of the year, which doesn't necessarily, as Mr. Boreman has explained, segregate the figures with respect to each individual operation --

Is that right, it doesn't segregate your figures with respect to each of your garages?

THE WITNESS: No, our financial statement includes all the operations in Florida and Arizona and everywhere else, also certain other businesses that are connected with the company that are not directly involved in parking. I would be glad to supply you that.

MR. BOEHM: Your accountant doesn't give you any figures with respect to your operations, say, in the City of Pittsburgh alone?

THE WITNESS: Oh, yes, sir, we have a day-by-day report which you are perfectly welcome to see.

if you wish. Our tax auditor sees them all the time, and they will come out to the same numbers you have (indicating) here.

MR. BOEHM: For each garage in the City?

THE WITNESS: Yes, sir.

MR. BOEHM: That is what I would like to see.

THE WITNESS: We have voluminous records. You would be looking at a file full.

MR. BOEHM: Do these reports conclude what your profits are, for example, from the garages in the City of Pittsburgh?

THE WITNESS: Each report would not. Each report is the business done in that particular operation. You could by looking at those reports determine what the profit was or the loss was, but you would have to compile them exactly the way you have (indicating) here. You would be going through exactly the same thing that Mr. Buzzard did.

MR. BOREMAN: Your Honor, when he asks for statements or financial statements, they are hearsay as much as that (indicating) would be. Statements are what an auditor said the books show. That is exactly what we are showing. Mr. Buzzard is going to say that is what the books showed. He is free to

go down and look through our books and records. He is going to have to go through weeks of compilation which Mr. Buzzard did. That is why this is the simplest way.

THE COURT: As we said before, Counselor, it is up to Mr. Boehm to decide what he wants and what he wants to examine, and it is up to him to carry the ball from here on out.

MR. BOREMAN: Your Honor, I would like you to have with counsel's permission a copy of this book so that you can follow this testimony.

First I will offer in evidence what has been identified as Plaintiffs' Exhibit 1 --

MR. BOEHM: I don't think a proper foundation is laid at this time unless he puts Mr. Buzzard on the stand. He compiled the report.

THE COURT: Let us get this settled one way or another. If you want to withdraw this witness and call another witness to properly authenticate that instrument, fine.

MR. BOREMAN: Will you step down temporarily, Mr. Shepard?

THE COURT: We will withhold our ruling on Mr. Boehm's objection pending the disposition of

J. S. Buzzard - Direct

(27) 41a

the testimony insofar as the record is concerned.

If you want to proceed at this time with this witness for the purpose that you have in mind, you may do so.

(Plaintiffs' Exhibit No. 2 was marked for the purpose of identification.)

- - -

JOHN S. BUZZARD, called as a witness on behalf of the Plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. BOREMAN:

State your name, please.

John S. Buzzard.

Where do you live?

401 Neulon Drive, Mt. Lebanon Township, Pittsburgh, Pa. 15216

What is your occupation?

My present occupation, I'm employed by Donald M. McNeil, consulting engineer.

In what capacity are you employed?

I'm a planning supervisor having to do principally with the analysis and compilation of statistical material concerning parking, urban renewal projects, the great high school project and various other projects of similar nature.

2a(28) J. S. Buzzard - Direct

Q How long have you worked with Mr. McNeil?

A I've been with Mr. McNeil since September, 1968.

Q Prior to that period will you give us your educational and business background?

A I'm an electrical engineer graduate of Carnegie Institute of Technology in the class of 1925. I was employed by the Pittsburgh Railways Company from 1925 to the time it was taken over by the Port Authority in 1966. In my employment with the Pittsburgh Railways Company I held a number of positions in the engineering and supervisory capacity in the maintenance and construction of electrical equipment. I also entered the operating field and held several positions in the traffic and transportation department. And in 1950 I became General Superintendent of Traffic and Transportation which was the largest single department in the Pittsburgh Railways Company having charge of all of the transit operations of the system.

And when the Port Authority took over the operations of the railways, I was retained as General Superintendent wherein I had approximately the same functions and responsibilities as I had with the railways company. And on January 1, 1966 I was made Operating Manager for the Port Authority which position I held until the time I retired in May, 1965 -- in 1968 having attained the age of 65 at which

time retirement is required.

In the course of your work with Pittsburgh Railways Company and the Transit Authority, did you engage in any statistical studies in the preparation of statistical studies and analyses?

Yes, to a very considerable extent. Besides my duties and responsibilities insofar as the overseeing and planning of the work of others, I had the responsibility for the preparation of the provisional and departmental annual operating budget projections broken down by month, I had the responsibility for the preparation of the maintenance of statistical records to indicate the extent to which the budget projections were being adhered to, and -- as head of the Transportation Department I did a continual study of maintenance, not only for the purpose of maintaining a high degree of regularity, but to determine the causes of schedule breakdowns. Recurrent traffic congestion and delays were matters of great concern and required a great amount of attention and statistical compilation. In this connection a constant and close liaison between the City's Bureau of Police and Bureau of Traffic Planning was maintained. All practical methods were used to eliminate and minimize the causes of recurrent delay.

During my employment with both the Railways Company and

445 (5.7)

J. J. Buzzard - Direct

PAT I participated in all wage contract negotiations between management and union representing the operating employees. In this connection I personally prepared or supervised the preparation of numerous statistical analyses of the cost of the proposed changes in the wage contract. In most of those instances where the wage contract negotiations became stale-mated and resulted in a wage arbitration, I was either a principal witness for the arbitration board in presenting testimony and statistical exhibits, proposed changes in the wages and working conditions, or I had the responsibility for the preparation of such exhibits and testimony.

Over the past 30 years, I've been a management member for both the Railways Company and PAT on a number of arbitration boards established to decide discipline cases or cases relative to the application or interpretation of the contract.

Stick to your experience with respect to statistical data, analysis and preparation.

Did you ever testify before any official boards with respect to statistical data for the Pittsburgh Railways Company?

1958 I was a principal witness before the Public Utility Commission in a service complaint and presented and gave extensive voluminous testimony and had prepared exhibits

J. S. Buzzard - Direct

(31)45a

concerning schedules and the scheduled maintenance of every route of the Pittsburgh Railways system and to the degree with which those schedules were maintained. I have also given testimony before the Public Utility Commission in a number of other more minor --

MR. BOEHM: I didn't hear the last thing you said.

THE WITNESS: I said more minor affairs.

MR. BOEHM: Could you read back the last couple of sentences, please?

(The last answer was read.)

MR. BOREMAN:

Mr. Buzzard, I show you what has been identified as Plaintiffs' Exhibit 1 and ask you what it is.

Well, this is a book which contains the compilation of the operating revenues and the details of the operating expenses of each individual parking facility operated by the several Plaintiffs involved in this case.

Who prepared the book?

I prepared the book under the direction and supervision of Mr. McNeil, my employer, and with the -- that information being furnished by the accountants of the several Plaintiff companies, individuals or partnerships.

Tell us how you went about preparing that book, who you

consulted and what records you looked at.

A Well, with reference to Mr. Stabile's operations, I consulted with his --

Q Just a minute. When you say Mr. Stabile's operations, you mean the Plaintiffs'. Designate what operations they are.

A They are the Alco Parking, William Penn Parking Lot, Parking Service Corporation, Arena Parking, Fourth Avenue Parking, William Penn Parking Garage and Campus Parking.

In reference to those I spent considerable time in Mr. Stabile's general office working with his accountant in obtaining from their books and records the various data from which we construct the individual statements for the individual parking facility, whether it be a lot or a garage.

Now, for instance, in the case of the Alco Parking Corporation, that has some ten or eleven different individual facilities. They keep their books on a consolidated basis. It was necessary for us, when I say "us," I mean his accountant and myself, to go over their ledgers and break out the operating expenses which they have maintained individually for each lot, such as wages and parking tax, revenue and such things as they charge individually to each lot.

Q First, how did you get the revenue on each lot? Was there

J. J. Buzzard - Direct

(33)47a

a separate statement for each lot?

Separate ledgers. They maintained a separate ledger for revenue for each lot.

That is where you got the revenue figure?

That's right. They maintain a separate ledger for the wages and salaries for each lot.

Now, when it comes to such items as general office rent, pension fund expense, general insurance, which the corporation pays a blanket amount for, it was necessary for the accountant to go back and allocate a certain percentage of that lump sum to each one of these facilities because it is a part of the cost.

And you worked with him in making that?

I worked with him in doing that. Now, the -- for instance, the pension fund expense was allocated on the basis of the payroll, whatever the percentage of payroll for the individual lot was, the total payroll of the company, that percentage was applied to the overall pension fund expense.

Which items did not require allocation? Which were the fixed items that did not require any allocation among lots?

Well, if you look at one of these individual statements, parking tax did not require any allocation, payroll, rent did not require it, wages and salaries, group insurance did, pension expense did, general insurance did, maintenance and

48a(34)

J. S. Buzzard - Direct

supplies did not, uninsured losses did not, utilities and telephones did not.

Now, those various items constitute a very small --

Q Which various items?

A The ones that I said needed to be allocated such as group insurance, pension expense, general insurance and maintenance and supplies. Materials and supplies required some allocation. They as a total represent a very small percentage of the total operating expense and the variation in the method of allocation would not alter the overall figure.

Q So that insofar as the major items are concerned such as revenue, the amount of the parking tax, wages and salaries and rent, you got those directly from the ledger pages?

A That is right.

Q And they didn't require allocation?

A They did not.

Q And the minor items which required allocation were done on a basis that both you and the accountant considered logical?

A That's correct.

Q Now, Mr. Buzzard, in your opinion from your work is Exhibit 1 an accurate and correct reflection of what is on the books and records of these companies?

A It certainly is.

MR. BOEHM: I object. Your Honor, I would like

J. S. Buzzard - Voir Dire Exam (35)49a

to at this point cross-examine Mr. Buzzard on his qualifications before he testifies with respect to this.

THE COURT: Very well.

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VOIR DIRE EXAMINATION

MR. BOEHM:

Mr. Buzzard, you have said that you graduated from Carnegie Tech which is now C. M. U. with a degree in electrical engineering, is that right?

Yes, sir.

Do you have any degrees at all in the field of accounting?

No, sir.

Do you have any degrees at all in the field of economics?

No, sir, although the engineering course at Carnegie Tech at the time that I was there included a one-year course in economics and a one-year course in business law.

In business law, did you say?

Business law and a six-month course in statistics.

So that your educational background with respect to accounting is limited to a one-year course which you took at Carnegie Tech, is that right?

MR. BOREMAN: Excuse me, Your Honor. I am going to object to any further questions on the

qualifying. I am not presenting Mr. Buzzard as an expert witness. I am not going to ask his opinion. All we are presenting him for is to show he compiled that from the books and records which he testified he did. The issue is whether or not this document is a fair reflection of what is on the books and records. And all I gave his background for was to show that he did have statistical experience and wasn't just coming in not knowing about statistics.

THE COURT: The fact that you brought that very point out to show his capacity to make such a report and make such an analysis qualifies counsel's position here on a voir dire to explore that background a little further. Accordingly, we are overruling your objection and counsel will proceed.

(EXCEPTION NOTED)

MR. BOREMAN: I want it clear, Your Honor, that I didn't put him on for the purpose of an expert.

MR. BOEHM: I think the last question counsel asked, Your Honor, was with respect to an opinion, and there was testimony introduced that certain allocations were made in what was considered to be a logical manner.

Q. Buzzard - Your Direct Exam (37)514

MR. BOREMAN: He also testified it was a minor part --

THE COURT: Counsel, we have already ruled on this. We have overruled your objection. Now, let us get on with this.

MR. BOEHM:

The last question I asked was, I think, Mr. Buzzard, your educational background with respect to accounting is limited to a one-year course which you took at Carnegie Tech, is that correct?

My educational background, yes. But my experience -- That is all I asked you, sir.

And that was a course in principles of accounting, I suppose?

Yes, sir.

Have you ever been in business, sir, as an accountant?

No, sir.

Have you ever made an audit of anyone's books in return for which you received compensation?

No, sir.

When you were testifying before the Public Utility Commission with respect to rates, at that time you were an employee of the Pittsburgh Railways Company, is that right?

That's right.

Q You were not testifying there as an independent expert, you were testifying as an employee of the Railways Company?

A That's right.

Q In compiling this report did you discuss the figures that went into the preparation of the report with anyone?

A Well, I discussed them with -- at considerable length with not only the accountant, in this case of Alco and the related companies, but I discussed them at considerable length with Mr. McNeil as to how my -- how I was progressing in the process of the work.

Q But you prepared the report yourself, is that right?

A That's right.

Q And when you came to the point of inserting a figure in one of the columns containing that report, that figure was arrived at as a result of your own studies, is that right?

A That is right.

Q And when you made a decision with respect to allocation, as you say in a logical manner, that was your independent decision, is that right?

A No, sir. No, sir. I testified that that was done by the accountant, and in those cases where it was not necessary for me to deal with the accountant of the Plaintiff company I took their -- the figures that they submitted to me exactly. I made no allocation, no alteration, no change

whatsoever in their figures.

Then, were there certain areas of this report in which you felt personally incompetent to set out without first consulting the accountant that represented one of these companies?

I wouldn't put it that I was incompetent but I wanted their -- to do the allocating in the way that would conform to their methods of accounting, good accounting practice.

When you went to them, I suppose you had a certain decision to make, for example whether these allocations were going to be made in a certain manner or not, that is why you consulted the accountant?

Not entirely.

For example, what kind of a matter would you consult the accountant on?

In the first place, I consulted the accountant first to get the whole body of information, I got that from the accountant. Then, when it came to how to treat these unallocated items in their consolidated statement, then he decided as to how the allocation would be made.

The accountant did that?

He and I worked out the allocation mathematically.

How many different accountants did you talk to to help you make these decisions?

54a(40)

J. J. Buzzard - Voir Dire, xom

A Oh, only one.

MR. BOREMAN: I object, Your Honor, to the word "decisions." He didn't make decisions. He recorded what the accountant gave him as his decisions, the accountant's.

MR. BOEHM: I think his testimony will speak for itself.

MR. BOREMAN: Let us get the testimony straight.

MR. BOEHM: Would you repeat the last question, please?

THE WITNESS: I answered one. There was two.

BY MR. BOEHM:

Q The last question was, how many different accountants did you consult. You said one, and now you would like to change that to two?

A Right.

Q Who were they?

A Mr. Thomas Cassidy, who was the accountant for the -- for Mr. Stabile's firms, and Mr. Samuel Robinson who is a C.P.A. for the firm of -- the name escapes me now, but he does the accounting for the Liberty Parking.

THE COURT: That is one of the Plaintiffs in the case?

THE WITNESS: Yes.

MR. BOEHM:

Other than that, this report is your own personal report?

MR. BOREMAN: That is objected to, Your Honor.

THE WITNESS: No, no, it is not my personal report. I compiled the figures from the information that was supplied to me by the Plaintiff company.

MR. BOEHM:

I understand that. What I am talking about, other than that - I put it together.

Other than that, you yourself arrived at the figures that are inserted in those columns?

I put it together, yes, sir.

MR. BOEHM: Your Honor, I object to the use of this exhibit. I also object to the qualifications of this man who is actually testifying as an expert. He is testifying as an accountant. What he has done is examined the books, apparently, of these various corporations and he has made allocations, he has made decisions on figures that are being inserted in these various columns. That was a job for an accountant. It is not a job for an electrical engineer or an arbitrator on behalf of the Pittsburgh Railways or the Port Authority, or somebody. If this were a simple matter of merely producing the

statements for the various companies, then, as I said before, the best way of introducing this kind of evidence would be to bring in the owner of the company with the material, have him take the stand and testify that these are the figures. For some reason, counsel for the Plaintiffs thought it necessary to obtain the services of Mr. Buzzard to compile all these reports into one book and have him present them instead of having them presented by each owner. The reason for that is, I think we can all assume, there were certain conclusions made there and Mr. Buzzard is put on the stand in order to defend those as some kind of an expert which I don't think he is qualified to do.

MR. BOREMAN: This is a complete misstatement -

THE COURT: With respect to your position, Counselor, we disagree with you that Mr. Buzzard is not capable or qualified to do what he has done in this particular set of circumstances. Not only through his college training, his background as an engineer, but primarily and basically his experience in this matter of traffic manipulation and consultation and involvement has given him, as we see it, a proper background to compile such a report as he

has compiled for the purpose of facilitating matters in the trial of this case in which there are many parking authorities -- or, rather, parking organizations involved. As we see it, the breakdown of the various expenses and income, et cetera, et cetera, et cetera, is much better handled through a unification and through the testimony of one qualified expert as distinguished from having all of these individual companies come into court and present a breakdown of all of their particular statistics. I think basically this was done to facilitate matters. And I think that the material that is in there and the way that it was procured is appropriate, it is relevant and it is admissible.

As the Court pointed out before, counsel has every right to demand such other exhibits as it may see fit to properly present its case to the Court. By the same token, the Court has every right to have presented to it a simplified, uncomplicated, unmixed up class of exhibits, because you are asking the Court to make a very serious and involved decision on a set of circumstances that is highly technical and highly involved.

For that reason, we overrule your objection.

(EXCEPTION NOTED)

MR. BOEHM: Your Honor, that actually is the basis of my objection because this man has unmixed those highly complicated figures without an appropriate background. But I recognize the Court's ruling.

I would like to make a further objection to the use of this on the basis of the fact that it constitutes hearsay because, according to the witness's own admission, part of it was compiled after consultation at the direction of other accountants and other parties, so that I think this man cannot really offer this in evidence since it is at least in part, based on the information supplied by third parties who are not parties to this case and he actually relied on these third-party accountants for the decisions with respect to the compilation of these figures.

And I have one other objection with respect to the best evidence rule which I had made before. The best evidence is the actual books --

THE COURT: Counsel, I am sure you appreciate that this is not a jury trial, that we are in equity and the Court is entitled to use at least some

imagination in its approach to this problem. And we feel that the records, as such, or at least the figures from the various records from the various Plaintiffs involved in this case, the way it has been explained, are sufficient. We overrule your objection and note the exception.

(EXCEPTION NOTED)

MR. BOREMAN: I offer in evidence Plaintiffs' Exhibit 1 with a proviso that in accordance with the Court's ruling the material relating to Stanwix Auto Park under the columns headed for the Duquesne Sixth Street Garage and Smithfield-Liberty Garage, since the lessees are the Parking Authority in this case, that material is deleted from the exhibit and the remaining exhibit is offered into evidence.

MR. BOEHM: Is it correct, Your Honor, to say that all that is being offered in evidence with respect to that is the information applicable to the parties to this case?

THE COURT: That is correct.

MR. BOREMAN: Yes. Let the record show that all other documentation in this exhibit are solely parties to this case. There are no others other than parties.

602(46)

J. G. Buzzard - Direct

(Plaintiffs' Exhibit No. 1 was received in evidence.)

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DIRECT EXAMINATION (Continued)

BY MR. BOREMAN:

Q Mr. Buzzard, to the best of your knowledge, the statements contained in Plaintiffs' Exhibit No. 1 are accurate reflections of the books of the companies that you examined?

A Yes, sir.

Q Will you select an example? Let us take the first example on your Alco Parking. Will you explain the organization of this book and how it was organized and what it is intended to show?

A Well, first off, we took all of the individual operating statements.

Q Of each Plaintiff?

A Of each Plaintiff, and we summarized those on a single sheet ahead of those individual reports.

Now, on the Alco Parking there's ten individual lots and there's ten individual --that is lots or garages, and there's ten individual sheets representing the 1968-1969 revenue and expense of those facilities and a 1970 projection.

Q Tell us how you went about making that projection.

A The 1970 projection in all cases, these facilities and every

C. J. Buzzard - Direct

(47)61a

other one that is treated in this book, was based primarily on the actual parking revenue for the first six months of 1970 as carried on the books of the various Plaintiff companies. From that six months' revenue, we projected what the revenue for the entire year would be on the basis that the first six months it was 49.4 per cent of what the annual revenue would be.

Where did you get that 49.4 per cent?

We took 33 downtown parking facilities and listed their 1969 revenue by month, and we took the first six months and related it to the entire year and found that the rate relationship was 49.4 per cent.

That is for the year 1969?

1969.

Of those 33 facilities, you examined the first six months of their total yearly income for 1969 and it was 49.4 per cent of the yearly income?

That's right.

And, therefore, you used that same ratio on the first six months of 1970?

MR. BOEHM: Excuse me. I would like to place an objection on the record, Your Honor, to any 1970 projections made by this witness for the reasons that I have stated before. I didn't understand the

(2a(48)

J. S. Buzzard - Direct
book contained 1970 projections at the time I made
my objection, and I think for the reasons stated
before with respect to his lack of qualifications
he certainly is not in a position to make projections
for 1970 which certainly involve accounting
expertise.

MR. BOREMAN: Your Honor, he is a statistical
expert, and if ever a man is competent to make
projections I imagine a man who has had experience
in statistics is. He is simply taking the figures
of making a statistical projection. How else are
we going to know what the prospective effect of
their tax is unless we have some basis for judging?

THE COURT: We have already ruled on this.

(EXCEPTION NOTED)

BY MR. BOREMAN:

Q Continue, then, on how you arrived at that projection.
A Well, that accounts for how we arrived at the total 1970
revenue. In other words, we considered the first six
months was 49.4 per cent of what the twelve months would be.
The parking tax is very easily computed from the total
revenue. Once you have a total revenue you multiply that
by 19.6 per cent.
Q Why is that?

J. G. Buzzard - Direct

(49)63a

Well, the parking tax was 15 per cent for one month and 20 per cent for eleven months so that the average would be 19.6 for the year.

I think that is because the 20 per cent ordinance we are involved with here didn't become effective until February 1, so in January it was 15 per cent and from February on it was 20 per cent so it comes to 19.6.

The rent is -- it either stays the same if it's a fixed rental or in accordance with leases; if it is a rental which is -- goes up or down to some extent as a result of the revenue -- in other words, some of the leases have provisions where if the revenue is over so much, then 80 per cent of that overage goes into rent, so that the rent was figured out on the basis of those formulae that are contained in the leases. Wages and salaries --
Just a minute.

Did you examine every lease that is involved in every one of these lots?

Every one with the exception of the K-Seven.

THE COURT: The what?

THE WITNESS: K-Seven. It's the last one in the book. It's a company, Your Honor, and they did not -- their information came in very late and I was unable to contact the owner and get the information.

Qa(50)

J. I. Buzzard - Direct

THE COURT: Where are they located?

THE WITNESS: They are downtown. They have several lots downtown. It's an individual operation. He has about four or five lots.

BY MR. BOREMAN:

Q With respect to the three major operators, you examined all their leases?

A Yes. Wages and salaries, we increased the wages and salaries over the 1969 figure shown by an amount of eight per cent because on August 1, 1969 there was an increase of 25 cents per hour for the garage attendants and in 1970, August 1, there was a further increase of 15 cents per hour. Now, if you calculate that out, that is a 9.7 overall -- 9.7 per cent overall wage increase. We used eight per cent to be on the conservative side because some of the wages and salaries involve cashiers who did not participate in the wage increase; but the garage attendant personnel represents something in the order of 90 per cent of the total personnel. So we used eight per cent to increase the 1969 salary.

All other expenses we assumed would -- for the purpose of projection we assumed would be the same as in 1969. We have no way of telling whether there was going to be any increase in use of materials and supplies, the maintenance of repair, so we just used the same figure that was -- the

same amount that was spent in 1969 to come up with a projection of what the total operating expense would be and from that figure we could determine the projected operating income or loss.

You did that with respect to Alco Parking Corporation and with respect to all others of the Plaintiffs?

All the others, that's right.

So that Exhibit 1 contains a study of the statistics for 1968, 1969 and a projection for 1970 for each individual lot?

Yes, sir.

And, then, the summary sheet summarizes that?

Yes, sir.

And shows the total operation of each Plaintiff for the years 1968 and 1969 and a projection of 1970?

Right.

And that, I believe, is shown on the summary sheet in front of each Plaintiff's tab?

That's right.

Now, I see that you have some other compilations on that summary sheet. Take Alco Parking. Would you explain to us what you did there with respect to the matter below the black line, the beginning of 1969?

It was desired that we show what different result would have been obtained in 1969, say, if the tax had remained at

66a(52)

J. W. Buzzard - Director

10 per cent instead of being 15 per cent for eleven months in 1969, 10 per cent for one month, so that the information in the lower part of the summary for 1969 shows what the operating income or loss would have been had the tax remained at 10 per cent and also relating that to a percentage of the gross revenue for that year in each individual facility.

Q What about 1970?

A 1970 we did a similar compilation to indicate what the results would have been in the way of profit or loss. Number one, if the tax had remained at 15 per cent instead of going up to 20 per cent and what it would have been had the tax been 10 per cent; and those figures, those dollar figures and percentage figures, are shown across.

Q In other words, you showed what the net income or loss would be if the tax on the 1970 projection were 10 per cent, 15 per cent and 20 per cent?

A That is it.

Q And you also compiled the percentage of return.

Now, what is that a percentage of?

A That percentage of return is a percentage of the parking revenue, the amount of money that is taken in from the individual persons who park.

Q On that first column at Sixth and Penn I think you

J. S. Buzzard.- Direct

(53)67a

inadvertently left out the percentage figure which is obviously zero.

Zero left off.

You did the same with respect to the Stanwix Auto Park operation, did you not?

Yes, sir.

And with respect to Meyers Brothers?

Yes, sir.

Now, will you turn to the Meyers Brothers operation in Exhibit 1, and what does that show with respect to the net income both in dollars and percentage for the years 1968, 1969 and 1970?

In the year 1968 it shows an operating income of \$58,725.00

On what revenue?

On a revenue of \$917,673.00. That is a percentage of 6.4 per cent on that revenue, \$917,673.00.

MR. BOEHM: I can't hear you. Would you speak louder?

THE COURT: If you speak into the mike there I think your voice will probably carry.

THE WITNESS: I'll start all over again.
For 1968 the operating income for Chatham Center Garage --

MR. BOEHM: Excuse me, Judge. I don't think

68a(54)

P. J. Luzzatto - Direct
the microphone is on.

(Discussion held off the record.)

THE WITNESS: For the year 1968 the operating income for Chatham Center Garage was \$58,725.00. The total parking revenue was \$917,673.00, the income being 6.4 per cent of \$917,673.00.

BY MR. BOREMAN:

Q What was the parking tax rate in that year?

A The parking tax rate in that year was 10 per cent.

Q Go on.

A In 1969 the operating income was \$29,415.00 on a parking revenue of \$967,323.00 or 3 per cent of the parking revenue.

Q What was the parking tax in that year?

A Parking tax was 15 per cent for 11 months, 10 per cent for one month. Had the parking tax remained at 10 per cent, the operating income would have been \$59,320.00 or 6.1 per cent on a revenue of \$967,323.00.

Q On the basis of your 1970 projections.

A Going to the 1970 projection, at the existing tax rate the operating income would have been \$17,377.00 on a parking revenue of \$1,015,188.00 or an income of 1.7 per cent. Now, had the tax remained at 15 per cent, the operating income would have been \$64,076.00 or 6.3 per cent on a revenue of \$1,015,188.00.

J. G. Buzzard - Direct

(55)39a

And had the tax been 10 per cent, the operating income would have been \$114,835.00 or 11.3 per cent on \$1,015,188.00 of revenue.

So that we understand just what this summary sheet and the exhibit is intended to show as a comparison, will you turn to the summary sheet for Alco Parking Corporation, that is the first one, and under the first column, Sixth and Penn Garage as well as all the other facilities shown on that page. That page shows the same information that you have just been detailing with respect to Meyers Brothers Parking? It does.

That is as far as the format is concerned?

That is right.

Now, with respect to that Sixth and Penn Garage, will you tell us with respect to your 1970 projection percentage-wise what would be the net income -- both percentage-wise and dollarwise -- if the tax were 20 per cent, 15 per cent and 10 per cent?

Well, in the first place, the parking revenue is projected to be \$370,445.00. With that revenue and with the expenses and the tax having gone up to 20 per cent, the result would be an operating loss of \$23,902.00 in 1970. Now, if the parking tax had remained at 15 per cent the result would have been an operating loss of \$6,862.00. If the tax had

70a(56)

J. W. Burnard - Direct

been 10 per cent there would have been a profit of \$11,660.00 or a return of 3.1 per cent on a revenue of \$370,445.00.

Q Turn to the summary sheet on Stanwix Auto Park. Would you read off the operating income and the percentage as shown on Stanwix Garage for the projection of 1970?

A For 1970 only?

Q Yes.

A The projection in 1970 for parking revenue of \$539,558.00 would have produced an income of \$22,114.00 or 4.1 per cent on \$539,558.00. Had the tax remained at 15 per cent the income would have been \$46,933.00 or 8.7 per cent on a revenue of \$539,558.00. Had the tax been 10 per cent the income would have been \$73,911.00 or 13.7 per cent.

Q Now, with respect to all the lots combined by Stanwix Auto Park, the last column, what do those figures show for the 1970 projection?

A For the entire Stanwix Auto Park operation, that is the owned and leased facilities, the total revenue projected for 1970 would be \$638,895.00 and the result would have been a loss of \$13,604.00.

Q That is when the tax is what?

A That's when the tax is 20 per cent. If the tax had been 15 per cent it would have been -- there would have been a profit of \$15,631.00 or 2.4 per cent on \$638,895.00 of

E. S. Guzzard - Direct

(57)71a

revenue. And had the tax been 10 per cent there would have been an income of \$48,789.00 or 7.6 per cent on a revenue of \$638,895.00.

With respect to Alco Parking, what is the total result under the 1970 projection of all the lots operated by the Plaintiff Alco Parking Corporation?

The total parking revenues for Alco Parking for the year 1970 is projected to be \$1,446,446.00. The result would have been an operating loss of \$5,981.00 at the present rate of taxing.

At the 20 per cent rate?

At the 20 per cent rate. Had the parking tax remained at 15 per cent there would have been a profit of \$56,755.00 or a return of 3.9 per cent on the revenue of \$1,446,446.00. And had the tax been 10 per cent the profit would have been \$123,507.00 or an 8.5 per cent return on \$1,446,446.00.

THE COURT: Counsel, I believe at this time we will adjourn for the recess. We will reconvene promptly at 1:30.

(Luncheon recess taken.)

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SEPTEMBER 15, 1970Tuesday Afternoon Session

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JOHN S. BUZZARD, called as a witness on behalf of the Plaintiffs, having been previously duly sworn resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continued)

BY MR. BOREMAN:

Mr. Buzzard, going back to Exhibit 1 and turning to the Alco Parking tabulation, what does it show the parking tax paid in 1968 was for the first lot?

MR. BOEHM: Which one are you on, Mr. Boreman?

MR. BOREMAN: Alco Parking, the first lot, Sixth and Penn, the first garage.

THE WITNESS: The individual tabulation for the Sixth and Penn Garage showed that in 1968 the parking tax paid was \$34,154.00. That was at the rate of 10 per cent. For 1969 the parking tax paid was \$49,088.00, and that's at the rate of 15 per cent for 11 months and 10 per cent for one month, an average of 14.6 per cent for the year. The projection is that in 1970, on a revenue of \$307,445.00, the parking tax will be \$72,607.00 at the 20 per cent rate.

W. S. Buzzard - Direct

(59)73a

MR. BOREMAN:

Comparing 1969 and the 1970 projection, what is the gross revenue for 1969 and the gross revenue for 1970?

The gross revenue for 1969 is \$395,862.00 and the projection is \$370,445.00.

So even though the revenue has decreased by approximately \$25,000.00, the tax has increased by approximately \$23,500.00 is that correct?

That's right.

Exhibit 1 throughout will show these relative increases in revenue and increases or decreases in tax, will they not?

That is correct.

Let us just take one more example. Turn to the Stanwix Auto Pak under the first one, Stanwix Garage.

What was the tax in 1968?

The tax in '68 was \$52,306.00. In 1969 the tax paid was \$76,165.00 and that was on revenue of \$522,476.00. And in 1970 the projection shows a parking tax of \$105,753.00 on a parking revenue of \$539,558.00.

So with an increase of \$17,000.00 in revenue there was an increase of approximately \$29,500.00 in tax between 1969 and the projection for 1970?

That is right.

Turn to Meyers Parking system.

74a(60)

J. S. Buzzard - Direct

What is the parking tax in 1968?

A The parking tax in 1968 was \$82,034.00 on a revenue of \$917,673.00. In 1969 it was \$126,638.00 on a revenue of \$967,325.00, and the projection for 1970 is that the parking tax will be \$198,977.00 on a revenue of \$1,015,188.00.

Q So that on an increase in revenue over approximately \$48,000.00 we have an increase in tax of approximately \$62,000.00 between 1969 and the 1970 projection?

A 72,000.

Q 72,000?

A Right.

MR. BOREMAN: Incidentally, Your Honor, we have here a summary of each of the leases that are involved with these Plaintiffs from which Mr. Buzzard made his studies and made this report. We don't want to introduce them into evidence because we just don't want them public, but they are available for Mr. Boehm to read at any time he wants. He can have the original leases if he wants, but we have made a convenient summary to show the terms of all the leases.

MR. BOEHM: Do you want to give them to me? I will take them.

MR. MARTIN: No, we don't.

MR. BOEHM: I can't examine them here while I am trying the case.

MR. BOREMAN: You will have an opportunity while the trial is in progress overnight if you want to examine them. I don't mean you can examine them at this moment. I just want him to know that the summaries of the leases are available for him to examine.

(Plaintiffs' Exhibit No. 3 was marked for the purpose of identification.)

MR. BOREMAN:

I show you what has been marked Plaintiffs' Exhibit 3 and ask you to identify what it is.

This Exhibit No. 3 is a comparison of the 1969 receipts from the business privilege, mercantile and parking taxes and the number of taxpayers or business facilities paying each type of tax.

Did you compile that exhibit?

Yes, I did.

What was your source in compiling that exhibit?

Insofar as the business privilege tax and the mercantile tax, the amount of the receipts was taken from the controller's report.

City controller?

A City controller's report for the fiscal year ending December 31, 1969. Insofar as the parking tax is concerned, that data was obtained from the City treasurer's division of parking tax receipts.

Now,, insofar as the number of taxpayers is concerned, and with reference to the business privilege and mercantile tax, the number of returns was obtained from the data processing office of the City treasurer; and as to the number of facilities paying parking tax, that was obtained by actual count of the number of accounts which the particular division which handles the parking tax audited during the year 1969.

Q What does this document show with respect to the amount of business privilege, mercantile tax and parking tax paid and the number of taxpayers?

MR. BOEHM: Excuse me. I object, Your Honor, because this evidence is irrelevant, incompetent and immaterial. I don't see how that it affects any of the issues in this case. It involves the mercantile tax, the business privilege tax, neither one of which taxes are attacked here.

MR. BOREMAN: Your Honor, we believe that this is an essential document to show the comparison as to the amount of tax that is paid on these three

taxes. We are arguing uniformity here. We are arguing confiscation, and we think the Court ought to know the comparison as to how much tax was paid under each of these taxes and who paid them, the number of taxpayers paying them, because we think it shows the greatly disproportionate amount paid in the parking tax as compared to these other two taxes. One of the points we have in our case is that all other businesses are taxed once, the business privilege tax, six mills, or the mercantile tax, one mill wholesale. The parking tax on the exact same receipts on another business for the same kind of a privilege and the same kind of a tax, an excise tax, we are paying 200 mills plus the 6 mills. Parking operators are paying 206 mills, all other businesses are paying 6 mills. We think we have a right to show the comparison.

MR. BOEHM: If Mr. Boreman is going to testify, Your Honor, I would like to have the opportunity to cross-examine him and have him sworn as a witness.

MR. BOREMAN: These figures show the comparison of the tax payments.

THE COURT: We are in a court with counsel here. The mercantile tax and other taxes are not involved

here.

MR. BOREMAN: They are in uniformity, Your Honor. I submit respectfully to you the question of uniformity and I think on confiscation as well.

THE COURT: It isn't a question of the amount of the tax. Uniformity may have some relevancy with respect to here is a mercantile tax, here is a business tax and parking tax and half a dozen other taxes --

MR. BOREMAN: Your Honor, we have another contention. One of our points we are urging is that this is double taxation and we want to show the amount of double taxation on this.

THE COURT: Have you alleged that in your complaint?

MR. BOREMAN: Yes. It is in our complaint and it is in our memorandum. We have a separate section arguing the point.

MR. BOEHM: Your Honor, I have researched that point. There is nothing wrong with double taxation. There is no law which forbids a business from being taxed twice.

MR. BOREMAN: We think we presented the argument in our trial memorandum, if Your Honor will read it.

THE COURT: If you have alleged that we will permit you to explore this phase on the basis of what your allegation was in your complaint.

MR. BOEHM: Your Honor, this document is prepared for the purpose of showing that a few taxpayers pay a lot of taxes on the parking tax and that many taxpayers pay, I suppose, a lot of taxes with respect to other taxes. How can that be really relevant as to the issues involved in this case.

MR. BOREMAN: I think it bears on the issue of double taxation.

THE COURT: Counsel has suggested that it has some bearing in view of the fact that they claim in their complaint that it is double taxation. The Court will consider that, whatever the value of that exhibit may be, for what it may be worth.

MR. BOEHM: The exhibit doesn't show, does it, how much business privilege tax or how much mercantile tax you pay, is that right, the Plaintiffs in this case?

MR. BOREMAN: Yes, it does. It shows how much parking tax we pay.

MR. BOEHM: I didn't say parking tax, I said

80a(66)

J. S. Fawcett - Direct
business privilege and mercantile. If that exhibit showed that, then it could be admitted, I suppose, if the Judge says double taxation is illegal, to show you pay more than one tax and then we can discuss whether you pay it on the same thing or on something else. But it's not even intended to show that.

MR. BOREMAN: We can easily show that, but it seems to me this exhibit is relevant because of the two facts, double taxation, confiscation, uniformity. It seems to me there are three bases there to begin with. I think the question is the weight of it and not so much the relevancy of it or the admissibility of it.

THE COURT: We will permit you to follow through on that.

BY MR. BOREMAN:

Q What does it show?

A Well, the exhibit shows that insofar as the business privilege tax is concerned, the receipts for 1969 as reported by the City controller were \$4,501,221.87 paid by 13,974 taxpayers. The mercantile tax, the receipts as shown by the City controller's report for 1969 produce a total revenue of \$2,021,826.85 paid by 7,250 taxpayers.

J. S. Buzzard - Direct

(67)81a

Now, with reference to the parking tax, the receipts for 1969 as reported by the City treasurer were \$2,121,442.00 paid by 299 individual parking facilities. Now, that is different from the number of taxpayers on account of the fact that the parking tax is collected for each individual lot or garage.

That is one taxpayer who owns ten lots may file ten returns? That's right.

Now, with reference to the parking tax paid by the Plaintiffs in this case, the amount was \$1,304,004.00 and was paid on 59 separate facilities.

MR. BOREMAN: I offer in evidence Plaintiffs' Exhibit 3.

THE COURT: We will admit it with some qualification as to the consideration as to what it may be worth in view of counsel's objection as to the relevancy.

(Plaintiffs' Exhibit No. 4 was marked for the purpose of identification.)

MR. BOREMAN:

I show you what has been marked Plaintiffs' Exhibit 4 and ask you what it is?

Exhibit 4 is the amount of real estate tax exemptions on garages in the Pittsburgh Parking Authority as calculated

82a(68)

J. S. Buzzard - Direct

from the exempt assessments on record and existing tax rates.

(Plaintiffs' Exhibit No. 5 was marked for the purpose of identification.)

BY MR. BOREMAN:

Q I show you what has been marked as Plaintiffs' Exhibit 5.
I ask you what that is.

A Exhibit No. 5 is a tabulation showing the amount of parking tax paid for the years 1963 to 1969 inclusive compared with the amount of real estate and mercantile tax receipts for those years.

MR. BOREMAN: I offer in evidence Plaintiffs' Exhibits 4 and 5. The basis of these, Your Honor, is to show a comparison of real estate taxes from which the Parking Authority is exempt whereas the private operators pay the real estate tax and also pay the parking tax.

MR. BOEHM: I object, Your Honor, for the reason that this evidence is irrelevant, incompetent and immaterial. It is a question of the uniformity, apparently, of the parking tax, and I still don't understand how these other taxes become involved. The parking tax is imposed uniformly on Parking Authority garages as well as private operators. We don't need an exhibit to prove that the Parking

Authority is exempt from real estate taxes. There is no doubt about that.

MR. BOREMAN: Your Honor, it is in our complaint that the part of the uniformity issue is that the Public Parking Authority is exempt from real estate taxes and we have to pay real estate taxes, private operators.

THE COURT: The Authority is exempt under the law, isn't it?

MR. BOREMAN: Yes.

THE COURT: That is no basis for lack of uniformity.

MR. BOREMAN: We are not contending here that we ought to be exempt from real estate taxes. We are trying to show that for the exact identical function the Parking Authority is exempt from real estate taxes which enables it to make a profit which we can't make because of the fact that we pay real estate taxes. I think we have a right to show what those real estate taxes are.

THE COURT: I am not satisfied that this goes to the crux of the issue.

MR. BOREMAN: I agree with you. It doesn't hit precisely on the issue. I think it is relevant to

84a(70)

J. S. Buzzard - Direct

see the whole picture to see what is being done here, what taxes are being paid by these respective bodies, I think that Your Honor can consider that. I don't claim that this is the vital controlling matter in the case.

THE COURT: I don't want to get the record involved with a lot of collateral material here that is irrelevant. That is what I am trying to get across to you, and I think in view of the summary of these two exhibits this is not relevant and accordingly we are going to sustain your objection, Mr. Boehm.

MR. BOEHM: Thank you.

(EXCEPTION NOTED)

MR. BOREMAN: We have an automatic exception noted on all of these, Your Honor.

(Plaintiffs' Exhibit No. 6 was marked for the purpose of identification.)

BY MR. BOREMAN:

Q I show you what has been marked Exhibit 6 and ask you to identify that, Plaintiffs' Exhibit 6.

A This is -- Plaintiffs' Exhibit No. 6 is a comparison of the parking rates in effect at two privately owned parking garages.

For the Plaintiffs?

plaintiffs' parking garages and one Authority garage, namely the Sixth Street Garage and the two Plaintiff garages are the Stanwix Garage and the Gateway Center Garage. They are a comparison of their rates for the years 1967, 1968, 1969 and 1970.

MR. BOREMAN: Now, Your Honor, before introducing the evidence I want to state that the purpose of this exhibit is to compare the rates of the private operators with a Parking Authority garage to show the difference in rates is a basic argument which we will be called upon to meet that we cannot pass on this tax, that our rates are sufficiently higher than the competitor, the Parking Authority garage, we are unable to pass on the rates. And I think this exhibit is relevant for the purpose of showing that we can't pass on the rates, that they are now as high as they can be; and I offer in evidence Exhibit 6.

MR. BOEHM: I object to it, Your Honor, and state unequivocally that the exhibit cannot be relevant for that purpose. It is not a question of the private lots being unable to compete with an Authority lot or because of the fact that the

86a(72)

Colloquy

Authority lot has a real estate tax exemption, the law specifically authorizes the creation of a Parking Authority for that very reason the same as we franchise the Port Authority and other segments of business, and we know that private operators because they want the utilities franchised or subsidized by the Government are in a difficult position to compete. That is not the issue in this case.

THE COURT: We appreciate that, but I assume that what the Plaintiffs' point in these exhibits is not so much to point out that the Authority is tax free whereas the private parking facilities are not, it is to point out the background to show that this so-called tax that is placed on the private industry cannot be passed down, that it is basically on the circumstances involved in each particular area that has this parking setup, and it is through that that this tax has created this unequal situation that has, according to their position, I gather, made the setup confiscatory insofar as that tax is concerned.

MR. BOEHM: Your Honor, is not this tax imposed uniformly on the private lots the same as

it is on the public ones? They are talking about a real estate tax which is not imposed uniformly because the law has specifically exempted the Parking Authority from the real estate tax.

Now, if the purpose, however, of this kind of an exhibit is to show that they can't pass the increased parking tax of five per cent onto the consumer, then I think it has to be irrelevant. By showing a difference in rates you don't show that. The way to show that is, "After the increase in tax we raised our prices, but when we raised our prices our volume was decreased, therefore we lose customers when we raise a price."

There hasn't been any evidence to that on the stand yet. That is the way to show --

THE COURT: I am not saying that is the purpose of this exhibit. This may be one of them --

MR. BOEHM: That is what Mr. Boreman said it was.

THE COURT: In any event, all of this taken together sets the picture for the Court to make a decision one way or another as to the Plaintiffs' position here in this matter. And assuming that Mr. Boreman will follow through with his exhibits

88a(74)

J. S. Buzzard - Direct

in explaining the situation with probative evidence we will permit him to proceed and on that basis overrule your objection.

(EXCEPTION NOTED)

(Plaintiffs' Exhibit No. 7 was marked for the purpose of identification.)

BY MR. BOREMAN:

Q Mr. Buzzard, will you explain how that was prepared on the basis upon which it was prepared?

A I prepared this exhibit. The rates for the Duquesne and Sixth Street Garage are published by the Port Authority -- by the Parking Authority each time there is an increase in rates on a sheet like (indicating) that.

Q By the way, these rates are following a rent increase put in by the Parking Authority?

A Well, the 1970 rates were effective February 1, 1970. And the 1969 rates became effective January 21, 1969 for the Parking Authority. The other rates were obtained from the records of the Plaintiffs' operations and were set down for each hour as has been shown on the exhibit so that it will be possible to -- by checking across for each hour to see the difference in the rates.

Q Now, I show you what has been marked as Plaintiffs' Exhibit No. 7 and ask you what that is.

J. S. Buzzard - Direct

(75)89a

This is an exhibit entitled, "Average Parking Rates," and it is an excerpt from the 1969 Parking Study for Pittsburgh, Pennsylvania Central Business District made for the Pittsburgh Parking Authority by Wilbur Smith and Associates dated June 9, 1970. It compares the one hour, two hour, three hour and all-day parking rates for 20 public lots, for 8 public garages and for 8 Parking Authority garages.

MR. BOREMAN: Your Honor, by way of preliminary statement before offering this in evidence, this is the same as Exhibit 5 except it is an average study, the study of these number of lots and garages in which the figures have been averaged for a comparison.

MR. BOREMAN:

What was that prepared from?

As I said, the source of this was the 1969 Parking Study for Pittsburgh, Pennsylvania Central Business District made by Wilbur Smith and Associates dated June, 1970.

MR. BOREMAN: I offer in evidence Exhibit No. 7.

MR. BOEHM: I object, Your Honor.

THE COURT: We will overrule your objection.

(Plaintiffs' Exhibit No. 7 was received in evidence.)

MR. BOEHM: It is irrelevant, incompetent and

immaterial and hearsay.

THE COURT: We are inclined to agree with you, but we feel it may have some significance.

(Plaintiffs' Exhibits Nos. 8, 9 and 10 were marked for the purpose of identification.)

MR. BOREMAN: Your Honor, I have no further questions at this time of Mr. Buzzard, but I would like to offer into evidence Plaintiffs' Exhibit 8 which is the original parking tax ordinance of 1962.

THE COURT: Is that the City of Pittsburgh?

MR. BOREMAN: The City of Pittsburgh Parking Tax Ordinance of 1962. I would also like to offer Plaintiffs' Exhibit 9 which is the present parking tax ordinance which is in controversy in this case. There is a third ordinance, the one that was passed in 1968. I don't have a copy. I would like to produce a copy tomorrow.

THE COURT: Is it necessary to have all these prior ordinances in evidence or is it just the ordinance that you are complaining about?

MR. BOREMAN: Well, Your Honor, there is a question that arises as to whether or not if you were to declare this ordinance invalid on the ground of lack of uniformity it would necessarily

make the others invalid since 1962, and I think that --

MR. BOEHM: They are not effective any more. They are gone.

THE COURT: They are not in effect.

MR. BOREMAN: Are you saying they are no longer in effect?

MR. BOEHM: No, the legislature has set it, the local tax, it says you must pass it every year.

MR. BOREMAN: You don't pass the parking tax every year.

MR. BOEHM: That is why you have all those different ordinances.

MR. BOREMAN: You didn't pass it between 1962 and 1968. It was in effect every year.

MR. BOEHM: We should have. If we didn't, we could be in trouble, I would think.

MR. BOREMAN: All right, I will restrict it to introducing --

THE COURT: Put into evidence the ordinances involved in this proceeding.

MR. BOREMAN: I offer into evidence Exhibit 8.

MR. BOEHM: No objection.

THE COURT: It is admitted.

92a(78)

J. S. Buzzard - Cross

(Plaintiffs' Exhibit No. 8 was received in evidence.)

MR. BOREMAN: I offer into evidence Plaintiffs' Exhibit 9 which is Ordinance No. 675 of the City of Pittsburgh, the business privilege tax ordinance, which I think is relevant, Your Honor, because this is one of the things that we are saying in reference to double tax and in uniformity.

MR. BOEHM: I object.

THE COURT: We will admit it. We will admit the exhibit.

(Plaintiffs' Exhibit No. 9 was admitted in evidence.)

MR. BOREMAN: You may cross-examine.

- - -

CROSS-EXAMINATION

BY MR. BOEHM:

Q Mr. Buzzard, when were you retained by Mr. Boreman to compile this report?

A I wasn't retained by Mr. Boreman. I was assigned to the job by Mr. McNeil, and I don't know just exactly when he was retained by Mr. Boreman.

Q When did you begin the preparation of the report, Mr. Buzzard?

A I think it was back in June that I started on it.

In June of 1970?

Right.

When was it completed?

Last night.

Last evening?

Last evening.

With respect to the various owners of the parking garages that you have listed here, did you take into consideration all of the parking facilities owned by each of those owners? We took them into consideration, but there are some that are not in there. For instance, the Allegheny Center Garage and Alco is not in here on account of the fact that that is a very special situation. It has --

The answer is "No," is that right, you did not include all of the parking facilities owned by each of the parties to this case when you compiled this report?

MR. BOREMAN: Your Honor, I think he has a right to explain his answer.

THE WITNESS: I was trying to explain how many were --

MR. BOEHM: He does. I am going to ask him that next, but I would like him to say "Yes" or "No" first and then explain it.

THE WITNESS: No.

BY MR. BOEHM:

Q And, then, the next question is, how many facilities are missing and what are they?

A The Allegheny Center Garage is missing from the Alco operation, the Roosevelt Annex lot is missing from William Penn Parking Lots.

Q From independent parking lots, is that what you said?

A From William Penn Parking Lots.

MR. BOREMAN: I am sorry, I didn't get that.

MR. BOEHM: Is that microphone working yet?

MR. BOREMAN: No.

THE WITNESS: It was included on account of a major change that was made in the size of that lot so that the information concerning it was in no way comparable.

MR. BOREMAN: Which lot is that?

THE WITNESS: It isn't even listed. It's the Roosevelt Annex lot of the William Penn Parking Lot partnership. The Meyers Parking System has a garage in the University Health Center which was not included because it is operated on a management fee and it is not a comparable operation. The Carlton House Garage is not included, I'm not sure what company that is -- Alco, on account of the fact that

J. S. Buzzard - Cross

(81)95a

that is a special management-fee arrangement and is not comparable to any of the other operations.

Q. BOEHM:

Is the Carlton House Garage, do you know, subject to the parking tax?

I'm sure it is. I'm sure it is. All the others are. The University Health Center Garage --

residential parking, so far as you are concerned in preparing this report, is taxed the same as commercial?

I didn't understand your question.

Are you assuming that the parking tax is imposed on residential parking the same as it is on commercial parking?

No, sir. No.

Is the Carlton House Garage residential parking or commercial?

It is partially commercial, and I suppose there are some tenants up there who enjoy the residential parking classification.

But you don't know, is that right?

I don't know. We didn't make a study of that.

Is that all, sir?

That's all.

Those four are omitted but all of the other parking facilities owned by the Plaintiffs in this case are included, is that right?

A Yes.

Q Regardless of whether those facilities are subject to the parking tax? Maybe I can rephrase it if you are having a little difficulty.

The question is, did you include in your figures facilities owned by these operators which are not subject to the parking tax but located in the City of Pittsburgh; for example, residential parking lots?

A I included all of the operations that they submitted to me as being commercial parking operations. If they have others, I don't know about them.

Q Did you compare the incomes received from the commercial as opposed to the non commercial?

A With reference to those --

MR. BOREMAN: If the Court please, I object to that question as being irrelevant. The ordinance itself does not tax residential parking.

MR. BOEHM: I withdraw that question.

BY MR. BOEHM:

Q Let me ask you this question: Did you see a financial return of each operator which included their returns from the parking lots that are taxable and also the returns from the parking lots that are not taxable?

MR. BOREMAN: That is objected to as being

irrelevant, Your Honor. This witness was engaged through Mr. McNeil's office to prepare the financial data of gross revenue and expenses of commercial parking operations, which he has done. I don't see any relevance to whether he saw non commercial or residential and compared them.

THE COURT: That is germane to the subject here. He can answer the question "Yes" or "No."

Answer the question, if you can.

THE WITNESS: I did not examine any records of any facility which was entirely residential. In some of the facilities that we examined there was a portion of their revenue that was due to what is termed "Rental by their tenants." We knew what that amount of revenue was.

MR. BOEHM:

How did you determine that, sir?

It was listed in their ledgers.

Listed where, in their records?

In their ledgers.

What happened when you prepared this compilation was that you took the records that they gave to you on the representation that they were the records that were involved in this case and made your summaries just from those records,

is that right?

That is correct.

So that you assumed that they gave you, of course, all the records that were material to the case?

That is correct.

Now, with respect to Allegheny Center, which is the first one you mentioned that you omitted, that is one that is owned by the Alco Corporation. Why is it that you eliminated that one from your consideration?

That is not owned by Alco. It is operated by Alco Corporation for a lessee of the garage. The matter of rent is in -- is under reconsideration, and it's a matter in a state of flux and, therefore, we could not say exactly what the rentals are going to be. And we did not want to show a picture for that particular operation that was not comparable.

Is the Alco Corporation a corporation that is run by Mr. Stabile?

It is.

Did you have any difficulty in obtaining the records of Mr. Stabile?

No, sir.

They were all in good shape when presented to you in the first instance?

The corporate records were complete, as I explained at the outset. They were not broken down by individual facilities, and it was necessary for us to break them down by individual facilities.

Do you have with you in court, sir, the information submitted to you by these various individuals that you used to compile this report?

No, I don't.

You have it in your office?

That's right.

Why is it that the Roosevelt Annex lot -- you said before that there was a major change made in the size of the lot and that is your reason for not including that one, is that right?

Right.

And you also eliminated the Meyers Parking System lot at the University Health Center, is that right?

That's right.

Why did you eliminate that one?

That is a relatively new facility. It's on a management-fee basis, and the expense figures are not comparable with one that is a leased or owned facility.

And the last one was the Carlton House Garage.

The same thing applies there. It's a management-fee basis,

100a(86)

J. S. Buzzard - Cross

and the operator doesn't even handle the receipts.

Q There are some garages that you have in your report that are operated on a management-fee basis, aren't there?

A Yes.

Q I notice that in your summary with respect to these corporations, for example the Alco Parking Corporation which is the first one, I can't find any listing of the net profit of the corporation as a result of the operation of these eight lots, eight different lots -- ten different lots. There are ten different lots.

Did you compute that, sir?

A No, sir.

MR. BOREMAN: I don't think he understands your question.

Read the question again.

(The last question and answer were read.)

THE WITNESS: The reason my answer is no is that this is the revenue from parking operations only. There are other income, concessions and so on. This was prepared on the basis of parking revenue only.

BY MR. BOEHM:

Q So that the corporation has other income which you did not consider and this report in no way reflects the actual

financial condition of the Alco Parking Corporation as a whole?

I am not enough of a C.P.A. to say whether or not it does or it doesn't. The concession income is relatively small, what I saw.

Sir, don't testify to that unless you can tell me what it was or what the proportion was. If you have the records to back that up, I think you can testify to it; but don't guess.

You don't know what it was, do you?

No, I don't know what it was.

Your study didn't include that?

We definitely ruled it out. We did not want to include anything else except revenue from parking.

And that was restricted, too, because you have omitted those four parking facilities.

Now, for example, in your breakdown with respect to Alco, which would be on the second page of your report, you break down operating expense, and the first category is taxes. Are the federal taxes paid by the Alco Corporation listed there as an operating expense?

You mean income taxes?

Whatever federal taxes they pay, sir.

Anything other than income taxes if there were federal taxes,

102a(88)

J. S. Buzzard - Cross

and I don't know what they would be.

Q You don't know what federal taxes a corporation has to pay, do you?

A If there were federal taxes that were payable as an operating expense they would have been listed on their statement and they would have been included in here under "Other taxes," but federal income taxes were definitely not included.

Q Why was that?

A Because it's not an operating expense.

Q It wasn't an operating expense for your purpose?

A Federal income taxes are not an operating expense.

Q Why do you distinguish between federal income taxes and these other taxes considering one of them as an operating expense and the other as not being an operating expense?

A Because I was informed by the accountants that that is accounting practice.

Q In fact, all of the practice that you yourself employed in compiling this report with respect to accounting was obtained from someone else, you have no knowledge of accounting practices yourself, do you?

A I wouldn't say I don't have any.

Q You do have that course you took.

A I was governed by the accountants for these various companies.

J. S. Buzzard - Cross

(89)103a

Let us take the Alco Parking Corporation No. 1 Item under "Operating Expense."

Are there any federal taxes included under "Operating Expense" at all? You have said that there is no federal income tax. Are there any other federal taxes included there?

No, sir.

None whatever.

Did you ask to see a federal tax return that was filed by any of these people who are parties to this suit?

No, sir.

You understand that a corporation does file a return citing its corporate net income?

Yes, sir.

And an individual files a Schedule C.

Yes, sir.

You never saw any of those kind of tax returns at all?

I was not auditing their accounts.

And those kind of taxes are not included under the heading of "Operating Expense," right?

They are not.

Did you compute, sir, for purposes of compiling this report, the percentage of increase, for example, of the operating

104a(90)

J. S. Buzzard - Cross

expense comparing the operating expense during the year 1968 and the operating expense during 1969 to see what the percentage of increase or decrease would be during those two years?

A No, sir.

Q You don't know, then, whether the percentage of operating expense increase is less or more than the increase in the amount with the parking tax?

A I do know that, yes, sir.

Q And what would the answer be?

A The answer is that the increase in the parking tax is much greater than the increase in the operating expense. I know that from study of the figures. It's perfectly obvious.

Q With respect to every one of these corporations?

A I wouldn't say that there might not be one which had some unusual increase in operating expenses which might have -- for instance, one of the large parking garages, the operator had to repair an entire floor which increased his operating expense by \$20,000.00. That was a one-shot proposition. That might have in that particular instance increased the operating expenses for that year greater than the amount of parking tax. I'd have to look at it. But in general the amount of parking tax was far greater than any of the other items contributing to operating expense.

Q So that in your opinion, with respect to each of these people that are included in your report, the percentage of the operating expense increase from one year to another is less than the percentage of parking tax paid when there has been a parking tax increase?

A Well, now, wait a minute. The parking tax is a part of the operating expense. What I said was that the other items of operating expense did not go up commensurate to the parking tax.

Q That is what I wanted you to answer. And that is true with that one exception?

A Possibly. I'd have to look at that one and examine that to see whether that is actually the case, but it could be.

Q Now, as I recall, when you compiled your projections for 1970, what you did was to figure out what percentage of the total revenue was attributable to the first six months during 1969, and I think you came to the conclusion that that was 49.6.

A 49.4.

Q And you figured that for 1970 the first six months would represent 49.4 per cent of the income, also, is that correct?

A Right.

Did you take into consideration when making that projection

106a(92)

J. S. Buzzard - Cross

that business could increase? For example, one of the factors which occurs to me offhand would be the stadium. Alco Parking, I suppose, will be running the new stadium parking lot, is that correct?

MR. BOREMAN: That is objected to, Your Honor.

The stadium is not yet opened and it is not in this compilation. We have not even considered it.

MR. BOEHM: That is my point.

THE COURT: Objection overruled. Proceed.

(EXCEPTION NOTED)

MR. BOREMAN: The objection also is, Your Honor, the best evidence is Mr. Stabile.

MR. BOEHM: That was my original point, Your Honor, but for some reason we came up with Mr. Buzzard instead, so we have to do the best we can.

MR. BOREMAN: It is not in this book at all. There can't be any figures.

THE COURT: This is cross-examination, and I am sure you are well aware of the fact that we give a pretty wide latitude to cross-examination, particularly if there is anything that is germane to the original subject. We feel that there is something germane.

MR. BOREMAN: Your Honor, I am not going to

pursue this further, but it seems to me that the stadium isn't even in that book, how can he project anything. It didn't exist in 1969, it doesn't yet. How can he say the stadium is more or less.

MR. BOEHM: I thought I saw a ball game there.

MR. BOREMAN: Oh, come on, Mr. Boehm.

MR. BOEHM: Would you read that question back?

(The last question was read.)

MR. BOREMAN: I have no objection to the first part of the question, did he take into consideration that business could increase.

THE COURT: Counselor, we have already over-ruled you.

MR. BOREMAN: Very well, Your Honor.

THE COURT: Will you answer the question, if you can?

THE WITNESS: The answer is no.

THE COURT: Now, let us proceed.

BY MR. BOEHM:

Your 1970 projections in no way take into consideration significant increases which may or may not occur which you didn't have available in 1969?

Do not, nor do they take into consideration the considerable decrease that will undoubtedly occur from the opening --

or the closing of Forbes Field with reference to the -- some of the lots of the Alco Parking such as the Syria Mosque lot, the Simon Temple lot and the O'Hara Street garage.

Q You can testify that there will be a decrease because of the closing of those lots in 1970?

A I can't testify to it any more than I can testify that there is going to be an increase due to the opening of the stadium.

Q Excuse me, I thought you had said -- you just did testify that there will be a decrease due to the fact that the Syria Mosque lots and these other lots were closed.

A I said we didn't take into consideration the fact -- if I said "will be" -- I said there might be a decrease and there might be an increase in the North Side parking.

MR. BOEHM: Your Honor, I would like to request at this time, since Mr. Buzzard has never seen them or has never had them available to him, that the Plaintiffs produce in court in line with Your Honor's suggestion this morning their federal income tax returns for these three years -- for 1968 and 1969, the 1970 they wouldn't have yet, the corporate file returned on behalf of the corporations and the individual return Schedule C filed on behalf of the

individuals.

MR. BOREMAN: As I said before, I have no objection to furnishing them, Your Honor. I submit to you that the returns are irrelevant because, as the witness has testified, he was engaged in what we thought was the only relevant thing in this whole case which was, what do the parking operations as parking operations do, what is their revenue, what are their expenses, was their profit and loss, and that bears on the issue of confiscation. Alco Parking Corporation might own real estate, and I think does, gets rentals outside of the parking business, may have exchanges of property, may make profit on all sorts of things, but what does that have to do with whether the parking tax is confiscatory on the parking business? I submit to you that under the testimony of this witness, he has combed the records and has testified from the records he has produced in this booklet, the revenue of parking and the expenses of parking and anything else is irrelevant. I submit that he can look at anything he wants, but for us to now be compelled to produce income-tax returns which contain all other sorts of material -- in fact, it absolutely is of no benefit or relevancy to this

Court because in the income tax return of Alco Corporation there is no conceivable way that you can check the revenue and expenses isolated of the parking business which is what we are talking about. There is no conceivable way.

MR. BOEHM: I think what Mr. Boreman --

MR. BOREMAN: It is simply a fishing expedition with no purpose in mind.

MR. BOEHM: The purpose in mind is to see whether or not Mr. Boreman is proving what he said in chambers he would be able to prove, that these corporations as a class are being put out of business by reason of this tax.

MR. BOREMAN: You are misquoting me.

MR. BOEHM: I am sorry if I am.

MR. BOREMAN: I said these Plaintiffs in their parking operations are being put out of business, the parking business, by reason of this tax. Now, Alco Corporation could go out of the parking business and go into the real estate business as Alco Corporation.

MR. BOEHM: I understand that they are only in the parking business; but I think if they are making a handsome profit on areas that are not subject to

this tax, or, for example, the four lots which are subject to the tax and just by reason of Mr. Buzzard's decision eliminated here, we can't really get a true picture of whether these corporations are surviving because of their parking operations unless we see the income tax.

THE COURT: How are you going to separate the wheat from the chaff in the income tax statements?

MR. BOEHM: The problem here is, Your Honor, they have the burden of proving confiscation. They are attempting to do it by having each one of these owners select certain records which those owners think are relevant for purposes of this suit, hand them to Mr. Buzzard, have Mr. Buzzard analyze them, come into court and testify to them and say, "That is all we are required to prove or submit to the Court."

MR. BOREMAN: That is a complete misstatement, Your Honor, and Mr. Boehm ought to know it.

First of all, Your Honor, Allegheny Center is a lease -- we have a statement here, we will show it, two hundred fifty, or thereabouts, thousand loss. We had it in the book and took it out because we thought it was unfair to show over a \$200,000.00

loss, and we will testify as to why it is completely an unfair statement; not a profit, a loss, two hundred to two hundred fifty thousand loss. We took it out because we thought it was unfair at my request, not at the owner's request.

Meyers Brothers is not Alco Corporation. The reason for that is it belongs to the University, and we will show the reason why we left that out. We have 59 facilities there. Four were left out for reasons which we will explain on rebuttal and not because the ownersaid, "We have decided they are real good things and we will take them out."

Your Honor can hear the testimony as to why they were taken out. For example, I have a financial statement of Allegheny Center that I didn't introduce into evidence because I thought there are circumstances which can be explained that would show a loss of \$227,000.00, a loss of \$615,000.00 in 1968. I didn't introduce it because it is not a fair reflection and there are other reasons.. Out of the 59 facilities we left out four, and he is accusing me of selecting certain ones and giving you a false picture.

MR. BOEHM: All I want is the privilege of

determining for myself whether it is fair or unfair to have this testimony in evidence. I think Mr. Boreman is a fair man, but I feel it is my duty to make this decision.

MR. BOREMAN: I object on the ground that it is irrelevant.

THE COURT: What trouble would it be for you to submit your income tax reports for the perusal --

MR. MARKS: Mr. Meyers' system is a huge -- it would be hard for the City solicitor to pick out what is relevant to this operation. If he wants particular information to the figures in this book he can have them.

THE COURT: Is this a national hookup, so to speak?

MR. MARKS: Yes. We are a subsidiary of Hertz which is a subsidiary of R. C. A. I don't think it would be helpful to anybody in this case to require national income tax returns.

MR. BOEHM: There is a serious question here that is going to have to be determined as a matter of law after the testimony is closed here because Mr. Boreman and I disagree on the question of what really constitutes a confiscation. Does it mean that

an individual is being put out of business or does it mean that he is not able to make a reasonable profit, as Mr. Boreman alleges, as a result of an operation now, according to the testimony, restricted to certain operations subject to the tax and even that being restricted. There is a basic legal problem there. It is too late after the legal question is decided to say to me, "I think you have the opportunity to see those tax returns," and the Court has been very liberal with respect to the introduction of other evidence. There is no jury here, as the Court has said, and I don't see what harm it will do to have me see those returns.

MR. BOREMAN: We are not talking about a corporation and all of its activities, we are talking about a parking business.

THE COURT: It is for the Court to decide and to separate the wheat from the chaff, so what harm will it be if counsel wants to examine income tax returns? You see, the burden rests with you people to prove your position beyond the fair weight of the evidence and to satisfy the Court from the probative evidence.

MR. BOREMAN: May I make my position to the

effect that, as I understand it, we are talking about the parking business, and I am saying that this tax is confiscatory as to the parking operations of these Plaintiffs. I don't care if the corporation of which -- for instance, I don't care if Meyers Brothers is engaged as securities dealers or own property in Europe and make \$8,000,000.00 on that property. The question is, does Meyers Brothers -- can they make a profit that isn't confiscatory in this Chatham Center operation that they operate in Pittsburgh? I don't care what their other business is.

THE COURT: If Meyers Brothers is operating in Pittsburgh they certainly should have adequate records to show what their income is from that business and their disbursements.

MR. MARKS: Absolutely, Your Honor. We will be glad to make those available.

THE COURT: All right. Make those available, and that is as far as we can go.

Does that satisfy you, Counselor?

MR. BOEHM: That satisfies me with respect to Meyers Brothers.

Now, we have the other parties.

116a(102)

J. S. Buzzard - Cross

THE COURT: The same applies to the rest of them. I can't conceive of, with there being some adequate measure of making records, how these people who have been in business for many years don't know that -- the left hand doesn't know what the right hand is doing.

MR. BOEHM: Except they needed a certain --

MR. BOREMAN: They do, Your Honor. That is why these are taken from their books. They made that determination from their books.

MR. BOEHM: It is agreed you will produce the tax returns for the others?

MR. BOREMAN: The federal tax returns you are talking about, the corporate returns, the Schedule C's.

MR. BOEHM: The Schedule C's, if they are individuals, and if they are corporations, the 1101's for 1968 and 1969.

BY MR. BOEHM:

Q Mr. Buzzard, several exhibits have been introduced into evidence which you have compiled, and one of those exhibits, as I recall, was intended to show that the privately owned parking lot is unable to pass an increased parking tax onto the customer, is that right?

A No, sir.

No, it is not?

No, it is not.

Are you of that opinion?

MR. MARKS: I object to the calling for an opinion of this witness on that point. He is not testifying as an expert as to the preparing of rates. I think he has the wrong witness.

THE COURT: We will sustain your objection.

(EXCEPTION NOTED)

MR. BOEHM: I am not permitted to ask him that question. He has testified already as to one of those exhibits. The Court may have the same recollection as the witness, but I am certain with respect to one of those exhibits where they argued the objection they listed the charges made by the Parking Authority lot, do you recall, they listed the charges made by a select few of private lots. Mr. Boreman said, "This is offered in evidence to show that the increased parking tax rate can't be passed onto the consumer."

MR. BOREMAN: And he testified that he compiled them, that is all. We didn't ask his opinion.

MR. BOEHM: It is offered in evidence through this witness and his compilation to prove that point.

MR. BOREMAN: We will put on a witness who will testify to it and you can cross-examine him.

THE COURT: Answer the question, if you can.

We are getting down to rug cutting here, gentlemen, that is a lot of collateral hocus-pocus. What I want you gentlemen to shape up to is to get into the main stream of what is involved here and cut out all this silly collateral arguing over fine technicalities because I told you before you are in a court of equity. We have enough imagination to appreciate what is involved in this proceeding.

Now, let us get into the main stream.

MR. BOREMAN: Your Honor, I am not doing the objecting. I brought this compilation to help the Court.

THE COURT: We are not asking for excuses. Let us get on here. This task is difficult enough for the Court to try to separate the wheat from the chaff, let alone to have all this collateral colloquy involved in it. We will have tons of testimony here to dissolve and digest.

MR. BOREMAN: I thought we were helping the Court by making this compilation and look at all the objections we have had over it.

MR. BOREMAN:

Sir, I show you what has been marked as Plaintiffs' Exhibit 6.

Would you take a look at that, please? You are familiar with it?

I am.

What does that show?

It shows a comparison of the parking rates, as I testified, of one Parking Authority garage with two of the Plaintiff-operated garages for various lengths of time during the years 1967, 1968, 1969 and 1970. That is all.

What is the purpose of this compilation?

To show the difference between the parking rates.

And it is not intended in any manner to assert that an increase in the parking tax cannot be passed on to the customer who parks his car?

MR. BOREMAN: That is objected to as asking for a conclusion of the witness.

THE COURT: Sustained.

(EXCEPTION NOTED)

MR. BOEHM:

Sir, when you made your compilation, which is marked Exhibit 1 here, did you take into consideration the fact that the various parking garages have increased their parking

120a(106)

J. S. Buzzard - Cross

rates from time to time?

A I was aware of it, yes.

Q Wasn't it one of the major factors that you considered?

A No.

Q Did you ask for any information or make any kind of a compilation with respect to the number of cars that may be parked in a particular garage, say, during the year 1968 as compared with the year 1969 or during the first six months of 1969 as compared with the first six months of 1970?

A We have some information as to that matter which I am not prepared to testify about.

Q Did you make any judgments or decisions in preparing this report other than the one that you have referred to this morning with respect to allocations for pensions and some other matters there?

A Once we had determined the format that we wanted to follow I stuck to that format and used the data that we had either obtained cooperatively from the various Plaintiffs or that they provided us as a result of our inquiry without contacting them whatsoever, and I did not interpose my judgment in any allocation or any change in what was assigned to one category or another.

Q How did you make that decision that you were talking about this morning with respect to allocation? You said you did it

in a logical manner, as I recall.

A Well, I think I explained that. With reference to the pension fund, for instance, where a company pays a certain blanket amount into a pension fund, take for instance Alco, we took the payroll which was carried in their ledgers for a particular lot or garage and allocated the pension fund expense to that particular facility on the basis of what percentage that was of the total payroll for that corporation.

Now, with reference to group insurance -- not group insurance but general insurance, we allocated that on the basis of the revenue for the particular facility or to the total revenue of the corporation, and it was always on one of those two bases that these general items were allocated, either revenue or wages.

Q So that you made allocations in the case of pensions and group insurance?

A Yes.

Q Were there any other allocations?

A General office rent where the corporation has one general office where all of the office activities are carried on, and the general office rent was allocated.

Q Do you remember doing this for Meyers Brothers?

No, sir.

Q You didn't do it for Meyers Brothers?

A No, sir.

Q Why was that?

A Because we had no information from them that there was general office rent --

Q I meant, let us take the allocation of pensions, for example, did you do that for Meyers Brothers?

A We had no information from Meyers Brothers. As a matter of fact, they submitted the data only for one of their operations, and that was the Chatham Center, and that was detailed by them in complete detail. I made no change in what they submitted whatsoever.

Q Are you saying you didn't take into consideration the fact of pensions in computing the operating expenses of Meyers Brothers?

A I made no allocations whatsoever in connection with Meyers Brothers. They submitted a complete breakdown which I took in toto for the Chatham Center Garage.

Q And you have no idea of any further detailed breakdown than what was submitted to you by them?

A No, sir.

Q If you don't know what went into these figures --

MR. BOEHM: Your Honor, I can't very well cross-examine. That is the handicap I have. He

doesn't know what went into those figures, so I can't ask him about them.

THE COURT: That is good logic.

MR. BOEHM: He shouldn't be on the stand, really. I should be questioning the people who know the answers to the questions.

MR. BOREMAN: Now, Your Honor, I thought we had gone all over this and I thought Your Honor had admitted this as an exhibit, and now Your Honor has spoken to me about delaying it. It seems to me we have gone past this question now. I don't understand this. The whole purpose of Mr. Buzzard is to say that he took these figures from the books and for the convenience of this Court gave a summary of the income and expenses. He has testified to that. What is all this, as Your Honor said before, colloquy back and forth.

THE COURT: At this time we are going to take a recess.

(Recess taken.)

MR. BOREMAN: If the Court please, pursuant to the Court's request counsel for the City and myself got together over the recess. Counsel for the City has requested we produce tax returns for

124a (110)

J. S. Buzzard - Cross

the Plaintiffs of the years 1968 and 1969 which we have said we will produce. I would like counsel for the Defendant to state whether there is anything further he would like us to produce.

MR. BOEHM: Nothing further.

BY MR. BOEHM:

Q Mr. Buzzard, with respect to some of the other parties to this case other than Meyers Brothers, did you take into consideration pension expenses in figuring your management and labor costs?

A You mean in allocating it?

Q Yes.

A No, sir, because they provided the information with reference to the pension fund if there was any for each of their specific individual operations. The only ones that we made allocations for was William Penn Parking, Alco Parking.

Q What was the first one?

A William Penn Parking lot, Alco Parking. That's all, those two.

Q Other than those allocations, are you saying what you really did in compiling this report was to create these categories that you have set up (indicating) here, like "Operating Expense," and then break that down, and so on and so forth, as you went (indicating) here; you have decided they would be significant factors and then asked the various corporations

to supply you the figures and you put the figures in there and put the book together, is that right?

A In essence, that is correct. We gave them forms similar to those forms, had them fill the data in.

Q And then they sent the forms back to you?

A Yes.

Q And you put them on the sheets and put them together in this book?

A That's correct.

Q Now, when you made these allocations with respect to William Penn and Alco, how did you calculate the number of employees? What number of employees did you use, the total number of employees employed by that corporation or something other than the total number?

A We didn't use the number of employees at all, we used payroll.

Q You took the total amount of your payroll?

A For a given garage or facility and used that payroll figure as a percentage of the total payroll for that corporation and partnership.

Q So if the payroll of one garage were \$25,000.00 and the total pension expense was \$1,000,000.00, you used those two figures in deciding what portion of the \$1,000,000.00 should be attributable to that particular garage, the same

126a (112)

J. S. Buzzard - Cross

relation the \$25,000.00 bears to \$1,000,000.00, right?

A If the total payroll was \$1,000,000.00, not the total pension expense, if the total payroll was \$1,000,000.00 and for a given lot it was \$100,000.00, then we would take ten per cent of the pension fund, maybe the pension fund was only \$5,000.00, but we put ten per cent of it onto that lot that had a \$100,000.00 payroll.

Q And that is the way you did it with respect to --

A Right.

Q You don't know, do you, Mr. Buzzard, anything about the terms of a contract that was negotiated between labor and management with respect to the parking garages, how that was effected or when it might have taken place with respect to the total figures you have here?

A Only with respect to wages and the wage increases that took place.

Q Did you know any of the details of those wage increases?

A Yes, I testified to that, that in 1969 the wage increase was 25 cents per hour.

Q For what corporation, all of them?

A This is a blanket contract.

Q I see.

A It covers the whole parking --

Q In 1969 there was a wage increase of 25 cents an hour?

A Yes, which brought the wage rate up, two forty. August 1, 1970 -- that wage rate in 1969 was August 1, 1969. There was a further increase August 1, 1970 of 15 cents an hour on garage attendants only.

Q Now, is that the figure that is represented under "Wages and Salaries" in your "Management and Labor Costs"?

A Yes.

Q Is that all that it includes or are there other, for example, management wages or salaries included there?

A As I said, there are some other employees in there such as cashiers, janitors, where the operation is large enough to have such employees.

Q Now about the officers of the corporation, they receive a salary, don't they?

A The information that I received was that this did not include officers' salaries. This included --

Q Officers' salaries are not included in your costs at all in this report?

A That's right.

Q Do you know any of the details of increases in the parking rates during the years 1969 and 1970?

A The rates are included in this (indicating) book for each company and when the rate was effective on each lot.

I forgot to mention that when I was explaining the

128a (114) J. S. Buzzard - Cross

contents of the book. But after each of the salaries of detailed individual sheets you will see sheets of the rates that are presently effective and the date that they became effective for each facility.

Q Can you tell me, for example, with respect to the Alco Parking Corporation looking at your report whether or not their rate changed subsequent to December 31, 1969?

A Well, I can't tell from the report, but I know that the rates did not change subsequent to December, 1969.

Q The report doesn't indicate whether or not the rates have changed subsequent to December 31, 1969. Can we find out that information from looking at the report with respect to any of these corporations?

A In practically every instance it will indicate that the rates did not change after December 31, 1969 except in those cases involving the Parking Authority garages where their rates changed February 1, 1970.

Q For example, look at Alco Parking Corporation, which is first. I guess they really got an alphabetical disadvantage there. We have been working them over pretty good.

Do you see the sheet on Alco?

A Yes.

Q Allegheny Center Garage is the one I am looking at, for example. That, I had thought, was not supposed to be

Included.

MR. BOREMAN: It was because we originally included it and took it out. We didn't change that page.

BY MR. BOEHM:

I notice the rates did increase for Allegheny County Center Garage.

Those rates are established by the Parking Authority.

Look at the next page. On the next page you have Greyhound Garage, February 1, 1969 rates. Where are the February 1, 1970 rates for the Greyhound Garage?

If you will look at the caption of the thing it says "Rates Presently in Effect."

On the one I am looking at it says "Rates effective February 1, 1969."

Go the back to the first page of the Alco Parking Corporation rates presently in effect. That means the whole business.

Is it correct to say that the rates that you have in your report are only the rates that are presently in effect?

Is that all you have included there?

Yes, sir.

So that you can't tell at all by looking at this report whether or not there has been an increase at any time in the

rates?

A Any time since when? Sure, there was increases in the rates within the last three or four years.

Q Does the report tell us that?

A It does not.

Q Is it correct to say all you can tell from looking at this report is what the present rates are?

A And how long they have been in effect.

Q And how long they have been in effect.

But we don't know what the figure was before it was changed to what the present rate is?

A Not from this report.

Q Do you have that information, sir? Did you take that information into consideration in preparing this report?

A We have the information, but I didn't take it into consideration.

MR. BOREMAN: If the Court please, the parking operators are going to testify and they can give him all that information.

MR. BOEHM: He has answered my question.

BY MR. BOEHM:

Q Mr. Buzzard, is there any indication in Exhibit 1 which you compiled of the parties' investment in each of these businesses?

No, sir.

MR. BOEHM: That will be all. Thank you, sir.

MR. BOREMAN: I have some redirect questions.

- - -

REDIRECT EXAMINATION

MR. BOREMAN:

Mr. Buzzard, with reference to the last question of Mr. Boehm, you didn't take into consideration any investment of the parties in any of these garages, did you?

No, sir.

And if there would be an investment that would be an extra charge against income, wouldn't it?

MR. BOEHM: That would be what?

MR. BOREMAN: An extra charge against income.

MR. BOEHM: I object to the question as leading his witness.

MR. BOREMAN: I think I have a right to show there would be less income and more loss and less profit.

MR. BOREMAN:

In other words, you left out any charge for investment, didn't you?

I only put in such charges as they gave me which might be charges on investment such as interest and amortization in

132a (118)

J. S. Buzzard - Redirect

a few cases.

Q Mr. Buzzard, Mr. McNeil designated you as part of his staff to make this survey and make up this report, did he not?

A He did.

Q Did he instruct you to leave out any operation?

A He did not.

Q Did any of the Plaintiffs whose reports you covered there instruct you to leave out any operation?

A No, sir.

Q Did I ever instruct you to leave out any operation?

A No, sir.

Q Now, then, what is the total number of operations in that book?

A I think it's 57 or 59.

Q As a matter of fact, I think you misspoke yourself. I did tell you to leave out Allegheny Center, didn't I?

A That was just the other day.

Q You originally put in Allegheny Center, didn't you?

A Yes, I did.

Q And I told you to leave it out, didn't I?

A Yes, sir.

Q Why did I tell you to leave it out?

MR. BOEHM: I object to that question.

MR. BOREMAN: I think it is a fair question.

J. S. Buzzard - Redirect (119) 133a
Your Honor. He is trying to --

MR. BOEHM: He can't tell what your intention was. You can tell us.

MR. BOREMAN: I want to show why.

THE WITNESS: The loss being so great distorted the overall results for the Alco Corporation, and the matter of the adjustment of the rental which was causing the extremely great amount of loss was a matter that was still under adjustment.

MR. BOREMAN:

And so, therefore, what was the reason you left it out?
Because it distorted the picture so badly.

In what respect, in the respect of making a high profit or
a big loss?

Because of the very high loss which has been shown is
between two and three hundred thousand dollars a year.

(Plaintiffs' Exhibit No. 10 was marked for
the purpose of identification.)

MR. BOREMAN: I want to show Allegheny Center
was left out because of this huge loss, and we
thought it distorted the picture and left it out,
not because we are trying to cover up any pictures.

MR. BOEHM: Are you going to show the same thing
with respect to the others that are left out?

134a (120)

J. S. Buzzard - Redirect

MR. BOREMAN: I am going to question him as to why they were left out. I don't have the other statements.

MR. BOLHM: I have no objection.

THE COURT: Very well, we will admit it.

(Plaintiffs' Exhibit No. 10 was received in evidence.)

MR. BOREMAN: I offer in evidence Plaintiffs' Exhibit 10 being a statement of operations of Allegheny Center for the years 1968 and 1969 prepared by J. K. Lazzer, certified public accountant

BY MR. BOREMAN:

Q Why did you leave out the William Penn loss of the Roosevelt Hotel?

A On account of the fact that it had been a large parking lot and through a disposal of some of the property had become a very small operation or a comparatively small operation, and you couldn't compare one year with the other and you couldn't make any projection.

Q So it was left out because it wouldn't be relevant or pertinent or fair, is that correct?

A That's right.

MR. BOLHM: I object to the leading question.

BY MR. BOREMAN:

Now, this University facility that Meyers Brothers operate, that is a Parking Authority facility, isn't it?

Yes, it is.

Why did you leave that out?

In the first place, we didn't get any figures from Meyers Brothers on it, and in the second place, it is operated under a management fee where it isn't a matter of profits and loss.

How about the Carlton House?

Same thing. It's operated under a management fee and the operator does not even collect the revenues.

So in these four instances there was a specific reason for leaving it out, was there not?

That's right.

And was it left out for any purpose of hiding the true income figures of this survey?

Not in the least.

You said in making this study in making up this booklet you had forms printed with the pertinent data that shows on those forms. Did you simply send the forms to the people and wait for them to come back, or did you go to their office and go over their records with their accountants? Well, in the one case, I went to their office.

In which case?

A That was the case of the Liberty Parking, and their accountant is a man by the name of Robinson and he's with a firm I can't think of the name of. There are three names out in the G. B. U. Building out at the corner of Route 51 and Brownsville Road. And I went over the form with him, and he said that he couldn't give me the information right then but he would take the forms and go through their books and their records and provide the information for me and send the material in, which he did. I got the material back in about two weeks. I did not see their records.

Q In other words, they were furnished to you by the company's accountant?

A That's right.

Q How about the Stabile operations, did you go to their offices?

A I went to their offices many days.

Q With whom?

A With Mr. Cassidy, their accountant.

Q How about the Shepard operations, Stanwix Auto Park, and so forth?

A I went to their office on only two occasions. We came to an understanding as to the data that we wanted. I did not give them the forms which I mentioned to you in the first

place because at that time I hadn't had the forms printed, but they sent me substantially the same information in each case from which I transferred the information.

It was sent to you from their books and records and their bookkeeping people?

Exactly.

Did any of these Plaintiffs, to your knowledge, hold back any records or fail to give you any records that were pertinent to this determination?

No, sir.

When you were instructed by Mr. McNeil to compile these statistics, did he tell you that he wanted any specific answers showing profit or loss?

No, sir. He just said, "Get the data and put it together."

Did I tell you that I wanted you to compile statistics which would show a loss rather than profit or vice versa?

No, sir.

In other words, when you embarked on this work and completed it you had no instructions any way as to what the result should be or ought to be, or anything?

No such instructions whatever.

And you made the survey independently from the books and records furnished to you?

Exactly.

138a (124)

J. S. Buzzard - Redirect

Q Now, in the making of this Exhibit 1, you testified before that you did not consider federal or state income taxes, is that right?

A That's right.

Q So that these net income figures, whatever they show, would be net income on which the federal or state tax would then be taken?

A That's right, and we so named it in operating income --

MR. BOEHM: I would like to object to the last question and ask that it be stricken. He is not competent to testify to that. He couldn't ask the other questions I asked him that weren't set forth in that record. He didn't know anything about tax records when I asked him.

MR. BOREMAN: He testified that he does not show federal and state income taxes.

MR. BOEHM: The last question that you asked him is what I have objection to.

MR. BOREMAN: I am saying these are the net income figures before any federal or state taxes are taken off them.

MR. BOEHM: Are they or aren't they?

BY MR. BOREMAN:

Q Well, answer.

J. S. Buzzard - Redirect

(125) 139a

MR. BOEHM: Does he know?

THE COURT: Answer if you know.

THE WITNESS: I know that they are the operating income before any federal or state income tax.

BY MR. BOREMAN:

Q There was a reference, Mr. Buzzard, about these allocations you made.

Would you say that the items that you had to get allocations on were major items in expense or minor items?

A I said they were minor items of expense.

Q Could you give us an estimate of what percentage of the total expenses these items comprised, an estimate?

Would it be 25 per cent, 50 per cent, 5 per cent, or what?

A I would say it would be on the order of five per cent, at the most, of the total operating expense.

Q So that even if they were not precisely accurate they would affect this computation to the extent that they comprise five per cent of the expense items at the most?

A That's right.

Q As far as the rental figures and the computation of the parking tax when you made the computation and salaries and wages, would you say they are major figures?

A They are the major figures.

140a (126) J. S. Buzzard - Redirect

Q Would you say that they are correct?

A They are very accurate.

Q They are not allocations?

A They are not allocations.

Q Would you say that in allocating these expenses you were conservative or liberal with these expenses?

A Well, the only one that I would say that I was conservative on would be the increase in the wages of salaries. The other ones I would say were exactly calculated.

Q The wages that you thought you were conservative on, they could have been higher?

A By applying over the eight per cent figure when actually the increase figured out to be somewhere -- well, it was 9.7 per cent.

Q And in certain cases where you carried over the same expense you didn't take into consideration their might have been an increase in those expenses?

A I did not. We had no way of knowing whether there might be an increase or not.

Q And the revenue projection of 1970 was on a mathematical basis based on the 1969 results, is that right?

A Based on the actual first six months.

Q And using the proportion of 1969 between the first six months and the last six months?

That is right.

Now, the scope of your employment was to prepare Exhibit 1 to show the operating revenue expense, expenses, net profit and loss and percentage figures of the parking operations only, is that right?

MR. BOEHM: I object to the question, Your Honor. Why can't Mr. Boreman say, "What was the scope of your employment," instead of telling him what the answer was.

THE COURT: We sustain the objection. Rephrase it.

(EXCEPTION NOTED)

MR. BOREMAN:

Will you tell us what the scope of your employment was in making this report?

I think I have already done it, but I'll do it over again.

I was directed to prepare a revenue and expense statement for each individual facility of the various Plaintiffs in this case. That was number one. Number two, from -- and to make a projection as to what the 1970 results would be in the way of revenue and operating expense and using that as a basis to prepare a summary for each plaintiff showing the individual figures and a total for his operation for 1968 and for 1969 and to project what the results

142a (128)

J. 3. Buzzard - Recross

would have been in 1969 had the tax remained at 10 per cent and for 1970 to project what the result would have been, either profit or loss, if the tax had remained at 15 per cent or at 10 per cent and to show in addition the present parking rates presently in effect for the various individual facilities of the Plaintiffs.

MR. BOREMAN: I have no further questions.

- - -

RE CROSS-EXAMINATION

BY MR. BOEHM:

Q Did you have any idea why this study was requested, Mr. Buzzard?

A Certainly.

Q You knew that these parties were contesting the validity of the parking tax, didn't you?

A I certainly did.

Q You knew a suit had been filed and Mr. Boreman was representing them?

A I certainly did.

Q You also knew the information you were compiling was important to them for the purpose of testimony in that case?

A I certainly did.

Q And the purpose of that testimony would be to show that the increase in the parking rates actually put them in a loss

position to a serious extent?

A I had no idea as to how the case was to be presented.

The scope of my activity was such as I had just described it. Anything from there on would be conjecture on my part as to how the attorneys were going to present that material.

Q Did you realize that the purpose of your work was to show that the increase in the parking tax was placing a heavy burden on the parties to this case, heavy financial burden?

A That wasn't the purpose that I was given --

Q Did you realize that, sir?

A I realized it as I went along, couldn't help it. Anybody would have to be -- be very stupid not to realize that from the results that came out of it.

Q And you were apparently either conservative or liberal on some aspects of preparing the report, right?

A No, sir.

Q You weren't?

A I was not. I was conservative on the wage issue only for a reason, that the wage and salaries did, I know, include some cashiers and other employees who were not included in the blanket wage increase so that I couldn't logically increase the wages and salaries by the complete 9.7 per cent. So to be on the safe and conservative side I used only the 8 per cent.

1442 (130)

J. S. Buzzard - Redirect

Now, to that extent I was conservative. Otherwise there was no conservatism or liberalism in any other respect. The figures that I received were put down just as I received them.

MR. BOEHM: That is all I have. Thank you.

MR. BOREMAN: Just one question.

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REDIRECT EXAMINATION

BY MR. BOREMAN:

Q Mr. Buzzard, when was it first brought to your knowledge that these figures would show a very serious loss and drop in the profit of the parking operators in the course of making this study?

A I didn't get the first part of your question.

Q When did you first come to the conclusion, as you said, that these figures would show a serious loss or drop in the profit of these parking operators in the course of making the study?

A I think I wasn't engaged in it for more than a couple of days until I realized that.

Q Did I ever state to you that if the picture showed a profit or no particular loss that we couldn't use the survey?

A No, sir.

MR. BOREMAN: That is all, Your Honor.

Colloquy

(131) 145a

THE COURT: We will adjourn until tomorrow morning and get started here promptly at a quarter past nine.

(Whereupon, the hearing was adjourned.)

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SEPTEMBER 16, 1970
Wednesday Morning Session

- - -

HARRY W. SHEPARD, JR., recalled as a witness on behalf of the Plaintiffs, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continued)

BY MR. BOREMAN:

Q Mr. Shepard, I believe you testified that you were also the manager of the Parking Authority facility that is leased to Horne's and also one leased to Gimbels?

A That's correct.

Q Is that correct?

A Yes, sir.

Q Would you make a comparison of the Parking Authority facility as far as its operation is concerned with your privately operated facilities?

A Outside of ownership and the way they are financed, they are exactly the same. Each one differs slightly because of location, because of demand, but the function is the same.

Q Do the employees both have unions?

A Yes. We deal with exactly the same union, both have unions.

H. W. Shepard, Jr. - Direct

(133) 147a

We handle a single payroll breaking the operation down with the employees. The employees are interchangeable.

They are in the same categories?

Exactly the same categories.

You are saying as manager of Horne's and Gimbels and as operator of your own private facility the employees interchange?

Yes, indeed they do.

You have one payroll?

Yes, sir.

What about the wage rates?

Wage rates are exactly the same. There is a general master contract for all parking employees in the City. It's negotiated with the Teamsters' Union.

Is there any difference in the number of employees with respect to the size of the facilities?

Not necessarily. The major garages are self-park facilities, they all have essentially the same number of employees.

They have the same number of cashiers, parking attendants, each one has a manager. The problems are basically exactly the same.

And the size of the facilities, what about that?

They are comparable sizes. My private garage has about six hundred odd spaces, the Authority garage at Gimbels has 605,

148a (134)

H. W. Shepard, Jr. - Direct

the Horne's garage recently added 300 spaces which would make it about 900. That's the one that competes directly with me.

Q What about the cost of erecting these facilities, are they comparable? Would there be any difference?

A The construction rates are changing so fast that I would assume that if you built two garages today they wouldn't be the same price.

Q Is there any reason for the difference in cost in building a Parking Authority garage and building a private garage?

A Well, privately you have a parking operator or someone familiar with the parking business who is educating the architect as to how to put the building up, and perhaps I could build it a little less expensive than the Parking Authority, which is basically a committee form of building. This gets a little more expensive. Really there should be no difference in the cost. The garage itself is the same way. Most of them are reinforced concrete construction. The site, the actual building site, may change the cost of it. Essentially they are the same type building.

Q Except for the financing of the operation is there any difference between the private and public parking?

A I would say no. Financing is one of the most difficult things we have to overcome. The Parking Authority can issue

H. W. Shepard, Jr. - Direct

(135) 149a

tax-free bonds and, therefore, enjoy an interest rate at about half of what a private individual would have to pay. They have extended terms of financing up to 40 years.

The private operator pays two points or more above the prime rate and can finance for not more than, say, 22 to 25 years. This essentially doubles the cost of financing the facility.

Q Now about real estate taxes?

A Real estate taxes are a very interesting situation. The private parking operator pays County taxes, school taxes and City taxes. The Parking Authority is free from all taxes, and any taxes it pays I think are voluntary.

MR. BOEHM: Do you mean all real estate taxes?

THE WITNESS: I'm not an attorney, of course, but I feel quite certain that the legislature granted them tax exemption from all taxes.

BY MR. BOREMAN:

Q I asked you about real estate taxes.

A Yes, sir, we pay heavy real estate taxes because of high assessments.

Q And the Parking Authority is exempt?

A The Parking Authority is exempt from all real estate taxes.

150a (136)

H. W. Shepard, Jr. - Direct

Q As a parking operator of both the public Authority garages and as a private operator of your own parking garages, is there any difference in the public services that might be required between the Authority garages and your private garages?

A No, sir.

Q Do your private garages require more police protection?

A No, sir. As a matter of fact, we require, all parking garages require, less police protection.

Q Does your private garage require any police protection other than the normal police service given in the City to everybody?

A No, it does not.

Q Are there any extra policemen stationed in front of your garages to direct traffic?

A No, sir.

Q Has there ever been one?

A Many years ago there was at a time when there was no parking in the City. There was quite a large amount of congestion and we had to keep the street open so that we could get cars into the garage.

Q You say many years ago.

Do you mean before the Parking Authority was established?

A Yes. This would be dating to 1947, '48, in that area.

Q Now about in the 1960's?

A There's no problem now at all.

Q Any difficulty or congestion of getting in and out of your garage?

A Only because of the busses in the street that block my entrance or exit.

Q What does that do?

A That creates congestion inside my garage.

Q Inside your garage?

A Yes, sir.

Q In other words, cars are lined up inside your garage?

A Oh, sometimes to the top of the building.

Q Are they lined up on the street?

A No, sir, not because of the garage. The traffic pattern creates that.

Q I mean cars that are parking in your garage, are they lined up in the street?

A No, sir. There are no cars lined up in the street either to get in or out of my garage.

Q Mr. Shepard, who supplied the records and the books from which Mr. Buzzard made his compilation?

A My accountant, Mr. Frank Benke, who is a certified public accountant and works for the firm of Cohen and Horovitz.

152a (138) H. W. Shepard, Jr. - Direct

Q Can you certify now that the figures contained in Exhibit 1 are a true and accurate reflection of your books and records?

A Yes, sir.

Q Mr. Shepard, referring to Exhibit 1, and your portion of Exhibit 1, Stanwix Auto Park, will you tell us how you account for the reduction in net profit in each of the years 1968, 1969 and the projection of 1970? What factors caused that?

MR. BOEHM: I object to the question, Your Honor, because Exhibit 1 doesn't contain any figures for net profit. I asked that question yesterday and the answer was no. There are no net profit figures in Exhibit 1.

MR. BOREMAN: I am referring to the net profit or loss figures on the parking operation in Exhibit 1.

THE COURT: Do you mean in the summary sheet (indicating) here?

MR. BOEHM: They are not supposed to be there. I don't know, are they?

MR. BOREMAN: It is the figure of operating income and on the individual sheets operating income or loss. I am referring to

H. W. Shepard, Jr. - Direct

(139) 153a

what is the cause of the operating income results in each of the locations.

MR. BOLHM: That is different.

THE WITNESS: It's entirely because of the parking tax.

MR. BOREMAN:

Why do you say that?

We've had increases in operating revenues, gross receipts have gone up, other factors have been relatively stationary. As you can see, even wages, which is one of the larger parts of the operating expense figures, have gone up a relatively small amount, percentagewise, as compared to the operating income. The parking tax has gone up over 100 per cent since it's been first instituted and takes the largest share out of our operating income. As a matter of fact, as far as the parking tax is concerned, it doesn't make any difference whether you are making money or losing money, this thing comes right off the top. If you are not doing any business you may have a chance to reduce your employees, you have no chance to reduce the parking tax. With the federal income tax at least you have to make a dollar before you pay any.

You have indicated that the gross revenue -- that is with respect to Stanwix Garage?

154a (140) H. W. Shepard, Jr. - Direct

A Yes, sir.

Q How about these lots, First Avenue lot --

A You have essentially the same thing would apply to those. The effect on the loss is largely due to the parking tax.

Q What do you mean by that?

A I mean the parking tax is taking 20 per cent of the gross receipts of the operation before one dime can be paid to our employees, can be paid as rent or can be paid for any other maintenance purpose of the facility, and if you don't pay it on time they put penalties and interest on you. At least some of your creditors you can stall off.

Q You have been in the parking business, you have testified, since 1937, I believe?

A Yes, sir.

Q And you have already given us your background, and you are familiar with the parking industry. As a parking operator in your own individual operations, what would you expect to earn as a fair return on your operations?

MR. BOEHM: I object to the question, Your Honor. It is irrelevant, incompetent and immaterial.

MR. BOREMAN: A question of confiscation Your Honor. He is the owner, he has a right to say what he would expect as to a return.

H. W. Shepard, Jr. - Direct

(141) 155a

MR. BOEHM: The objection is to the fact of this man's expectations of a fair return.

THE COURT: Yes, expectations. You are getting into the realm of conjecture, Counselor

MR. BOREMAN: No, Your Honor. What I am questioning here is that he is an operator and as an operator and based on his previous experiences in this whole industry what would he require to go into the parking business. In other words, if he were to make one per cent or three per cent or five per cent he might not go in the business; if he would make fifteen per cent he would.

THE COURT: We recommend you put this question to the witness: "What is the normal and usual rate of return on the investment?"

MR. BOREMAN:

What is the normal and usual rate of return on this business? I thought I had put it in a personal way.

I would like to see a ten to twelve per cent return as a minimum, and it's quite obvious that that would be a silly thing right now when you are suddenly faced with a twenty percent tax.

Why is that, can you explain that in more detail?

156a (142) H. W. Shepard, Jr. - Direct

A At this point it would be silly to go into the parking business for a ten to twelve per cent return when for no risk at all you can buy U. S. Government Bonds that pay seven per cent or eight per cent or Telephone Bonds. There is no reason to go into a business that involves risk if you can get the same thing from something that involves no risk.

Q You are referring to investing your own money?

A I'm always investing my own money.

Q How about if you take a lease, if you don't have the capital investment in a structure.

A You are accomplishing the same situation when you take on a lease. If you have to pay \$1,000.00 a month for a lot for a period of ten years, you are obligating yourself to \$120,000.00 and you are entitled to some protection on that risk. There is no reason in the world why I should sign my name and guarantee to pay \$120,000.00 unless I have some protection, and I don't like to see it taken away from me.

Q What do you say, then, is the normal rate of return of the parking operation?

A I would say twelve per cent, ten to twelve per cent.

Q Ten to twelve per cent?

A Yes, sir. That would be the minimum, sir. Naturally, in

Mr. Shepard, Jr. - Direct

(143) 157a

any business you try to make more money, the most money you possibly can.

Of course, when you say the ten to twelve per cent, that means a net income on which you have to pay federal taxes from it?

Yes, sir, I'm afraid so. That is the case. When you talk about net income you talk about net income before federal taxes, because they say the federal tax, you have to make it before you pay it, you can't anticipate it.

Mr. Shepard, referring again to Plaintiffs' Exhibit 1, the Stanwix Auto Park section, what did that operating income show for 1968?

513,057.

I mean the percentage of return.

15.3 per cent.

What was the tax rate then?

The tax rate was ten per cent.

And in 1969 what does that show?

7.6 per cent for a tax rate of 15 per cent.

THE COURT: Tax rate of what?

THE WITNESS: Fifteen per cent, sir.

MR. BOREMAN:

And in 1970, the projection, what does that show?

A return of 4.1 per cent, parking tax of 20 per cent.

158a (144) H. W. Shepard, Jr. - Direct

Q And for the totals of all your facilities, privately owned, what does it show for 1968?

A 12.2 per cent.

Q And for 1969?

A 2.3 per cent.

Q And for the 1970 projection?

A We show a loss in that case.

Q That result seems to be due in part to one of your lots showing a zero return in all the years. How do you account for that?

A Very easily. I made an error of judgment in projecting the income. It's one of the risks of going into this business that you face.

Q Are you under lease in that operation?

A Yes, sir. We have a lease in that operation.

Q Now, referring again to Plaintiffs' Exhibit 1 and the projection for your operation in 1970, how would you characterize the gross revenue projection in there, high or low?

A I would say that the gross revenue projection is high.

Q Why?

A Well, taking everything into consideration; one, there will be a certain increase, we've already seen that, in your night business because of the stadium. This, of

W. Shepard, Jr. - Direct

(145) 159a

course, will be greatly reduced as soon as the parking lots are completed around the stadium. However, at the same time, there have been -- there has been a large shopping mall opened in Monroeville, another one opened in Rochester, Pennsylvania. All of these things directly affect the business downtown. The population of the City of Pittsburgh is declining, the population in Allegheny County is stable. The only place that these people -- the shopping malls can do business is to take customers away from somewhere else, so they must take them away from downtown. These are the kind of things you think about when you try to develop a parking facility. The trend should be down. And I think -- most anyone will agree with me. If this was a growing city of growing area, why, there would be some validity to an argument of maybe we don't know whether it's going to go up or down. You said the projection for the Stanwix Garage is high. I see there is an increase of \$17,000.00 in 1969 of gross revenue. Do you think that's high?

I would say it's high when you are talking about a half million dollars of income.

Well, take for example, if they have to repair the street out in front of my garage it's way high. This is, again, one of the risks that you take in this business.

160a (146)

H. W. Shepard, Jr. - Direct

If we have snow a little earlier this year, again that income will drop. An early snowstorm can cost you \$1,000.00 in income.

Q Now, Mr. Shepard, what can you tell us with respect to your ability to sell your business if you wanted to sell it? What would be the situation?

A I doubt that I could sell the business for anywhere near what the mortgage is on it now.

Q Why?

A It doesn't show any income. A 4.1 per cent return wouldn't attract anybody. Today, as I said, you can get a fine return on bonds, seven, seven and a half per cent. Why should anybody invest in a parking facility? Before the parking tax unquestionable. Without the parking tax you have a very valuable property.

Q Can you cancel any leases you have?

A I can't cancel any leases. I can go to the owner of the property and say, "Please let me off the hook."

He doesn't have to, though, and in many cases will not.

Q On these lots that you have, how long are the leases, can you tell us?

A Fortunately, the leases are about to run out. I have a one-year lease on the First Avenue lot, a lease that will run out at the end of this year and then go on a month-to-

month basis.

The Quick Park Park Lot on Fourth Avenue has two more years to go, and it is renewable. I have a chance to change the terms on that one. The only thing that happens there is it reduces the return to the landlord, the parking tax -- if it doesn't take it away from me it takes it away from the landlord.

If you reduce the terms of the lease, then you could make a profit or a fair profit in operating the parking lot?

Yes. That's possible if I can reduce my lease equivalent to the amount of the parking tax.

If the landlord will agree to it?

If the landlord will agree to it.

On the other hand, that lot could turn over to become a captive lot of some office building where they offer free parking to the tenants, and in that case they write the cost of the lot into the lease and pay no parking tax. What do you intend to do with these leases that are running out? Are you going to renew them?

I certainly would not renew any lease that wouldn't give me a fair return. My time is -- if the parking business was as easy as some people think, anybody could get into it and anybody could walk in and operate a parking lot. They don't.

Are you stating that unless you can get some adjustment that would enable you to make what you call a fair profit you wouldn't renew the leases?

That's correct.

You mentioned about operating a parking lot. What does it take for an owner such as yourself to operate a parking lot? What do you have to know and do?

Oh, my. Well, in the first place you've got to be -- You have to be an economist, whether you graduate or not. You have to be able to project your income, expenses, you have to be able to project all of the costs of operation you have. You have to be able to predict what the trend in the City will be if you become involved in the construction of a parking facility. If you build a garage you have to be a complete building manager, you have to be able to educate the architect because architects are not parking people. You have to tell them how to build the garage, then you have to ride herd on the costs of building it. You've got to be a labor negotiator, and I think everybody knows here the Teamsters' Union is not the easiest union to negotiate with. You have to be a father confessor to your employees. They look up to you and you have to get into their personal problems. You have to deal with the public, which is one of the most

H. W. Shepard, Jr. - Direct

(149) 163a

difficult things to deal with. When something happens to a person's automobile you have to be able to treat them diplomatically, handle insurance claims, if it's an insurable one, and passify them if it's their fault and you are not responsible. You have to negotiate with the insurance companies because everybody is out to protect themselves. You have to negotiate insurance rates. You have to negotiate the insurance claims. You must consult with attorneys, you must appear before City Council when they try to pass a dishonest parking tax. You must appear in court and defend yourself. You have a complete maintenance program to look after. You have to repair cracks in the building, see that you can't be charged with negligence with the public entering and leaving your property all the time. You have to deal -- since we deal largely with shoppers, we handle women mostly in the Stanvix facility. They can be very unreasonable. You have to be able to hire managers that can look after things in your absence and you don't have much absence.

The parking business is a very personal business and you are at it ten, twelve, fourteen hours a day. And sure enough the day you leave on a vacation something will happen that you either have to come back or devote some time to it. I'm sure I've left out a hundred things, but

164a (150)

H. W. Shepard, Jr. - Direct

this is --

Q It isn't just a question of directing a car to a stall and collecting the ticket, is it?

A If it was, anybody could get into the business and be in the business. I wish they were now.

Q You mentioned about leases that are expiring on the lots. The Stanwix Garage, that is your own building, isn't it?

A Yes, sir. It's owned by a corporation which I control.

Q And you are the lessee?

A Yes, sir.

Q Can't you negotiate that lease so that you can make a profit on the parking operation? What happens then?

A Then the Stanwix Parking, Inc. loses money. They both lose money on the present operation with the tax as it stands.

Q Could you refinance?

A Oh, it would be impossible to refinance today because this present garage, the Stanwix Parking, Incorporated, is just barely turning a profit on this particular operation at this time. And this is with a five and three-quarter per cent interest, twenty-three year loan. Today you could not renegotiate the financing on the thing at under ten per cent interest and a fifteen-year financing period, and very likely you'd have to pay points which is an inducement

W. Shepard, Jr. - Direct (151) 165a
for somebody to give you the mortgage.

Is that why you can't refinance it, or does it have anything to do with the parking operation?

By your pardon?

Is that why you can't refinance it, or does it have anything to do with the parking operation?

Of course, it has something to do with the parking operation.

If the parking operation was throwing off a lot of cash or earning a large profit, then perhaps it could be refinanced at a longer period; but it's not doing that, and there is the threat of even higher taxes. Mr. Kuhn in City Council said they ought to be 50 per cent. Several of the other members of Council said it ought to be 33-1/3 per cent.

A lender would be out of his mind to renegotiate a mortgage under circumstances such as that.

MR. BOEHM: I think you ought to strike the hearsay from the record, Judge.

THE WITNESS: I don't know what hearsay is.

MR. BOEHM: It is your testimony as to what somebody else said.

THE COURT: It is not relevant for the purposes of probative evidence, what somebody else has said, or what your thoughts are as

to what you think it should be. We are concerned about what is at issue before the Court, not what you think would be the ideal situation. What we have at the present time, the basis of your complaint, that is what we are concerned about.

Now, as to the headache that you have in the operation of your business, I am sure you were aware of that before you got into the business or at least shortly after you got into it; and that, too, is irrelevant insofar as this case is concerned.

The issue here, as we understand it, is that the parking tax that City Council has passed by ordinance insofar as the private parking business is concerned has proven to be confiscatory insofar as your *motis operendi* is concerned because, according to your position, as I understand it, it cuts down on your overall income, your return on the business; and the tax, as I understand it, is based on the gross receipts rather than the net, and that that is taken off the top before your operating expenses come out.

W. Shepard, Jr. - Direct

(153) 167a

THE WITNESS: That is right.

THE COURT: Now, those are the things that we are concerned about in this.

MR. BOREMAN: I just wanted to point out, Your Honor, that confiscation is only half the issue. There is the other issue of discrimination.

THE COURT: I understand that. That is what I am trying to get across to Mr. Shepard here as to what is in issue in this case. We are not concerned about what Joe Blow said or his sentiments on it or the ideal situation. What we want to know is, what is it now, the factual situation.

MR. BOEHM: Judge, will the record note that my motion to strike the statements made by the City Council members is granted?

THE COURT: It is granted and the sentences will be stricken with respect to City Council.

(EXCEPTION NOTED)

MR. BOREMAN:

I have one more question. "Mr. Shepard.

You are familiar with the business privilege tax in

168a (154) H. W. Shepard, Jr. - Cross

Pittsburgh, and you pay that tax, do you not?

A Yes, sir.

Q You made a calculation as to what your operation would pay, percentagewise, with all other businesses that pay the business privilege tax?

A Yes, sir. We pay for the privilege of doing business in the City of Pittsburgh forty-four and a third times more than any other business.

Q That is a calculation made on what basis?

A The business privilege tax is six mills, the parking industry pays 206 mills. Then you divide the six mills into 206, and you come out to forty-four and a third times the tax of any other business.

- - -

CROSS-EXAMINATION

BY MR. BOEHM:

Q The 206 mills is arrived at by multiplying your 20 per cent by 10 which gives you your 200 and the business privilege is 6?

A Right.

Q You as part of the Stanwix Auto Park portion of Exhibit 1 operate the Stanwix Garage which you own, right?

A Yes, sir.

Q And the First Avenue lot which you do not own?

W. Shepard, Jr. - Cross

(155) 169a

I lease from Blue Cross.

Lease from whom?

Blue Cross of Western Pennsylvania.

And the Quick Park Lot on Fourth Avenue, do you lease that one?

I lease that one from Duquesne University and Calgon Corporation. They are two separate pieces of property that are put together for one lot.

And Fort Duquesne Sixth Street Garage is one that you just manage, is that right?

That's a management contract with Joseph Horne Company.

That is owned by the Public Authority of Pittsburgh.

That we are not taking that into consideration?

I would like you to take Gimbels into consideration because I participate in the profits there. It is an Authority garage. With Gimbels I participate in the net profit as part of my -- as an incentive for management.

The Judge has made a ruling on that.

How long have you been operating the Stanwix Garage?

Well, since it was constructed, which would be about nine years ago, nine and a half years ago.

About 1961?

Yes sir. We've been operating a parking facility on that location since about 1935. My father started operating

170a (156) H. W. Shepard, Jr. - Cross

there as a parking lot, then we built a garage in 1947 and then tore that one down to build the present garage and office building.

Q You built the present garage in 1961.

Have you made any major improvements to the garage since 1961?

A I don't know what you mean.

Q Have you altered the structure in a major way since 1961?

A No. It's basically a garage. It has been exactly that since that time. We added an office building to the top of it and an apartment, but the garage itself has stayed the same since it was completed.

Q When did you add the office building and the apartment on top of it?

A They came about two years later.

Q This is the structure across the street from Horne's?

A Yes, sir.

Q Does your Stanwix Auto Park Corporation own the apartment and the offices that are on top?

A It does not. The apartment and the office building are a joint venture of which Stanwix Parking, Incorporated owns 50 per cent.

Q Your corporation owns 50 per cent and somebody else owns the other 50 per cent?

That's true.

Who owns the other 50 per cent?

MR. BOREMAN: That is objected to as irrelevant and immaterial. I don't see that it makes any difference in this case. He has testified that his corporation owns 50 per cent.

MR. BOEHM: It could be relevant, depending on what the answer is.

THE WITNESS: They are nobody connected --

THE COURT: We will let it in. Answer the question.

THE WITNESS: The additional 50 per cent is owned by Mellon-Stuart Company, a contractor in the City of Pittsburgh, 12-1/2 per cent by Philip and Seymour Baskin and 12-1/2 per cent by Tasso Katselas, an architect.

MR. BOEHM:

Twelve and a half, twelve and a half and what was the other? Twenty-five per cent for Mellon-Stuart Company. Philip and Seymour Baskin are partners in Mr. Boreman's law firm who are representing you in this case? I don't know that.

MR. BOREMAN: I object to that, Your

Honor.

172a (158)

H. W. Shepard, Jr. - Cross

THE COURT: We will sustain the objection
(EXCEPTION NOTED)

BY MR. BOEHM:

Q Now, with respect to Stanwix, your First Avenue Lot where you lease from Blue Cross, how long have you been operating that lot?

A We have been operating that lot for -- I don't recall, four to five years.

Q Since 1965 or 1966, is that right?

A I would say -- it could be longer. I'm not familiar --

Q You are not familiar with how long you have been operating that lot?

A Yes, I am familiar with how long I have been operating that lot because it's been a loser. The lot was originally a warehouse -- we would be operating that lot for seven years.

Q Did you change the operation of that lot in any major way to accommodate more automobiles, for example, since 1963 when you first began to operate it?

A It was changed just recently when the Blue Cross bought the two adjoining buildings and the old V. F. W. property so that it added about 30 cars to the parking operation.

Q You did make a change recently to accommodate 30 more cars?

A Yes, sir.

How did you accomplish that, what kind of a change did you make?

Well, I did not make the change. The owner of the property made that change. He tore down the buildings and filled it with gravel, and it turns out that instead of getting the 33 cars that we thought we would -- I didn't ask you that.

We're only getting about ten.

MR. BOREMAN: You asked him the question; let him finish.

MR. BOEHM: That is what I want him to do just answer my questions, not volunteer information.

MR. BOREMAN: If you asked him the question "Who made it," he certainly could tell who made it.

MR. BOEHM: I object to the witness's volunteering information, Your Honor. He should answer the question I asked him.

THE COURT: The witness may answer the question, but he can also explain it, and that is probably what he was attempting to do.

MR. BOEHM: He was getting into another area as to how many people actually use the

174a (160)

H. W. Shepard, Jr. - Cross

30 spaces, and I didn't ask him about that at all.

THE COURT: We will sustain your objection.

(EXCEPTION NOTED)

MR. BOREMAN: It seems to me he asked him about the spaces and how many would it accommodate. I don't know why he can't explain what the spaces are for. Just because he might not like the answer --

MR. BOEHM: Your Honor, I think the answer is easy; Mr. Boreman has an opportunity to ask the witness more questions.

MR. BOREMAN: If you don't like the answer don't ask the questions.

THE COURT: The Court has ruled. I admonished you before about getting into this collateral argument. I am not going to admonish you again. Proceed.

BY MR. BOEHM:

Q Mr. Shepard, as to the Quick Park Lot which is located on Fourth Avenue, which you lease from Duquesne University, how long have you been operating that one?

A Ten years, I would say.

H. W. Shepard, Jr. - Cross

(161) 175a

Q You began that in about 1960?

A Yes, sir.

Q Have there been any major changes to that structure?

A No, sir.

Q Is that a structure or an open lot?

A It's an open lot. Aside from repairs and maintenance there have been no basic changes.

Q Have you made any alterations there so that you can accommodate more automobiles?

A No. It's completely bound property. There is no way to expand it unless a building was torn down.

Q Do you have Exhibit 1 before you?

A Yes.

Q With respect to your Stanwix Garage lot, I notice that under Numeral Three, Wages and Salaries, you had an increase from 1968 to 1969 of approximately 12 per cent, 56,000 to 62,000, is that right?

A Yes.

Q And, then, you also had an increase from 1969 to 1970 from sixty-two five to sixty-seven five?

A Yes, sir.

Q About eight and a half per cent.

This is as a result, I suppose, of your negotiations -

A Yes.

Q This is as a result of your negotiations with the Teamsters and labor contract that resulted?

A Unfortunately, yes.

Q And from 1968 to 1969 you had an increase in your general insurance expense of eight hundred and some dollars?

A Yes, sir.

Q But you don't anticipate in 1970 that that cost will be increased at all?

A We negotiated at that time a three-year policy. The insurance company has certain opening clauses in the event of more than normal losses.

Q I notice also that your utilities and telephone, for example, increased from \$7,317.00 in 1968 to \$8,182.00 in 1969 which is a substantial increase of almost \$1,000.00.

A Yes.

Q But yet you anticipate there again for 1970 that figure will be exactly the same?

A I didn't anticipate it, but Mr. Buzzard wouldn't increase it. There hasn't been any indication that the electric rates were going to go up so he wouldn't put an increase for utilities.

Q You say you didn't anticipate that, Mr. Buzzard did?

A Mr. Buzzard wrote the thing out as the same figure because we use the same amount of energy. I said it ought to be

higher because we might get an increase in electric rates, but he said you can't take that into consideration.

When was the first time you saw Exhibit 1 exactly in the form it is now?

About a week ago.

A week ago?

Well, when you say Exhibit 1 in exactly the form that it is now -- there are pieces of it that I did not see until today or yesterday in court.

Was there any of it that you didn't see until today?

No. Yesterday would be the first time that I saw much of it, all except my own. What I am trying to say is that I could not -- Mr. Stabile's figures were not -- am I editorializing now? If I am, I'm sorry. Mr. Stabile's figures were not available to me at all. Mr. Stabile's numbers were not shown to me.

I am talking only about the portion of Exhibit 1 which is applicable to you.

I thought you said Exhibit 1. I am familiar with the figures in Exhibit 1.

When did you see the figures that are set forth in Exhibit 1 applicable to your operations in the form they are right now in Exhibit 1?

In exactly this printed form I would say maybe a week ago.

Q One week ago?

A Yes, sir. I don't remember the exact day.

Q When you looked at it did you look at it and consult with Mr. Buzzard?

A The consultation occurred over a month ago when Mr. Buzzard was in our offices. We had break-down figures on these things. These were given to Mr. Buzzard, all of those numbers were analyzed and they are substantially the same today.

Q What I am driving at, I think you understand, is that you said it was Mr. Buzzard's projection of \$8,182.00 -- what I want to find out is if Mr. Buzzard had a figure in there which you didn't agree with, didn't you point it out to him, "This may be your projection, but it is not mind"?

A I don't know the point you are making. I am trying to say that many of the expense figures should normally be higher because this is what you come to expect. Now, if that's -- I hear the electric rates are going up, and if that is hearsay, okay. I don't know what you are driving at.

Q If you were preparing this report instead of Mr. Buzzard, it would be different than it is today, you would have higher expense figures, is that right?

A I'd add four to five per cent to the electric figures. I'd add two to three per cent -- we have already increased

W. Shepard, Jr. - Cross

(165) 179a

the labor rates because that is written into a contract.

The figures in this report are really not your projections for 1968 and 1969, they are Mr. Buzzard's?

They are much more conservative than mine would be.

MR. BOREMAN: They are not Mr. Buzzard's figures, they are the exact figures of the books.

THE WITNESS: That's correct, sir.

MR. BOEHM: That is what I am asking the witness.

THE WITNESS: They are much more conservative than --

BY MR. BOEHM:

Q You heard Mr. Buzzard say that he completed Exhibit 1 the night before we began this case.

MR. BOREMAN: I object to that, Your Honor. Mr. Buzzard's testimony was not that he completed it. He got it in that final form -- we took something out of Exhibit 1 in court yesterday.

BY MR. BOEHM:

Q Now, I don't know whether it is correct to say yours or Mr. Buzzard's, but from 1968 to 1969 with respect to the Stanwix Garage you show an increase in revenue and then

180a (166) H. W. Shepard, Jr. - Cross

you also show a continued increase in revenue for your 1970 projections.

A Yes, sir.

Q Did you take into consideration the possible increase with respect to users of the stadium for 1970?

A The projected income took two things into consideration. I took them into consideration.

Q Now, I am talking about 1970, so first I have to ask you if you played a part in the 1970 projection or if that is entirely Mr. Buzzard's projection?

A That's Mr. Buzzard's projection.

Q You played no part in that figure?

A No.

Q You don't know whether or not he took into consideration increased parking as a result of the opening of the stadium or not?

A Mr. Buzzard arrived at that by taking the six-month figures for 1969 and applying the same percentage to 1970.

Q So, obviously, he didn't take the use of the stadium into consideration?

A We talked about it and we decided --

THE COURT: Counsel, I think
Mr. Buzzard answered the very question that
you put in his testimony.

MR. ROEHM:

With respect to the First Avenue lot, your answer would be the same with respect to the 1970 projection, is that right?

Yes, sir.

Let me ask you this, Mr. Shepard, in your consultation with Mr. Buzzard did you give him any figures on what your investment is in these different garages?

I don't recall his asking that question at all.

You said with respect to the operation of the Horne's and Gimbel's lot, which are Parking Authority lots, that you interchange employees.

That's right.

But they are in fact on the same payroll?

Yes.

Could you explain that?

Each of the garages require a certain number of employees, all of the parking facilities require certain numbers of employees. We keep a time book on each facility. Every time an employee is assigned there, regardless of the number of hours he is assigned there, that time book is a record of the time that man spent on that particular location. If a man is sick or a cashier is sick and Horne's needs a cashier or Gimbel's needs a cashier, we are

182a (168)

H. W. Shepard, Jr. - Cross

free to take him from one location to another.

Again, the time book shows exactly the time worked in those particular locations. But since all of the men are essentially -- well, all of the men are members of the Local 926 of the Teamsters' Union, their rates are the same so that it costs no more to have a man of a certain class at Stanwix than it does to have a man of a certain class at Horne's or Gimbels or at the Quick Park Lot.

Q Do you keep separate payrolls for each of the lots?

A We keep separate payroll records. As a matter of fact, these records are audited continuously.

Q So that if your employees were actually used on a Parking Authority lot for a period of time, their expense would still be on your books for your private garage, right?

A No, sir. Any employee that works for Horne's is charged to Horne's and is not charged to Stanwix.

Q Then you do keep different payrolls, right?

A I said we keep different payroll records. We have one payroll. Maybe we're getting into a technical definition here.

Q What is clear is that your private lot pays only for the services rendered by employees that are actually working and for the number of hours worked on your private lot?

A Yes, sir.

W. Shepard, Jr. - Cross (169) 183a
and the records that you gave Mr. Buzzard reflect that?

Yes, sir, exactly.

Do you know the number of automobiles parked in each of the facilities that are set forth in Exhibit 1 that you manage under lease, the first six months of 1969?

I can't recite that figure, but I am sure that I can have it for you -- I could have it for you in a very short time.

A call to my office would give it to you exactly.

You don't know, then, I expect, the number of automobiles parked at these places for the first six months of 1970, either?

I could not say that, no.

Was that information given to Mr. Buzzard so that he could make his 1970 projection?

It was available to him. I do not know whether he took that information.

Following the financial sheets that are prepared there, Exhibit 1, for your operations, there is a schedule of parking rates presently in effect.

Do you see that page?

Yes, sir. It starts out with the Stanwix Garage, and it says "Rates effective January, 1969."

Does that mean that there has not been a rate change since January of 1969?

184a (170) H. W. Shepard, Jr. - Cross

A There was one rate change in the night rate that changed the maximum to a dollar and a quarter.

Q I am asking about the Stanwix Garage.

A Stanwix Garage, yes.

Q You say there was a change with respect to the Stanwix Garage?

A Only in the night rate.

Q Is that reflected on Page 1 there that we are looking at?

A It is not reflected on Page 1. The maximum should read \$1.25.

Q When was that change made, sir?

A That would be made the first of September. Give me a day or two forward or back on that one, please.

Q Sure.

MR. BOREMAN: The first of September
this year?

THE WITNESS: Yes, sir.

BY MR. BOEHM:

Q Were there any changes in your rates at all in February of 1970?

A There were none, no.

Q How about the First Avenue Lot which is on the same page. You say their rates were effective June of 1969. Was there any change in those rates since June of 1969?

No.

Did those rates become effective for the first time in June of 1969?

Yes.

That is when they were established?

Yes.

That is the case with the Stanwix Garage, too, that is when the rate was established?

The rate was established in January of 1969, yes, sir.

January 30, to be exact. I have a complete schedule of the rate changes if you are interested and the dates they occur.

With respect to the Quick Park Lot, which is the next one, did those rates as set forth become effective for the first time in January of 1969?

Yes, 1/27/69.

Has there been any change since that time?

No.

The next one is the Fort Duquesne Sixth Street Garage.

Those become effective for the first time February 1, 1970,

I take it?

Yes, Fort Duquesne-Sixth Street Garage effective February 1, 1970.

MR. BOREMAN: If the Court please,

186a (172)

H. W. Shepard, Jr. - Cross
counsel has already had his objection
sustained leaving out these Parking Authority
garages.

MR. BOEHM: I withdraw the question.

BY MR. BOEHM:

Q The Fort Duquesne-Sixth is a Parking Authority garage,
is it not?

A Yes, sir.

Q Mr. Shepard, you mentioned that part of your job as a
parking lot operator is to attend City Council hearings.

A Yes, sir.

Q When did you attend these City Council hearings in
connection with the proposed increase of this parking tax
from 15 per cent to 20 per cent?

A It seems like yesterday. It was when they had the public
hearing, and I could not tell you the date.

Q Sometime in November of 1969?

A I would assume so, yes.

THE COURT: Were you given an opportunity
to speak at that meeting?

THE WITNESS: Yes, sir, I did.

THE COURT: And did you present for and
on behalf of the parking business the
position that the industry would be placed in

H. W. Shepard, Jr. - Cross

(173) 187a

by virtue of the introduction of an ordinance raising the parking tax?

THE WITNESS: Yes, sir, I did so.

I don't have the notes that I made at that time.

MR. BOELIM:

Sir, has it been your experience in the past that when you increase the rates you also receive an increase in your revenue?

Yes, sir.

You also said in your testimony that there are no policemen that are stationed to direct traffic in connection with your garages, is that right?

I stated that there were no policemen assigned to my garage to direct traffic.

It is true, isn't it, that with respect to some of the garages you operate there are policemen stationed in the street to make sure that motorists do not make left turns, for example, into your garage?

Let us take the Stanwix Street Garage, the one across from Horne's. Isn't it true there is a policeman there on Stanwix Street to prevent motorists from making a left turn into your garage?

No, sir.

188a (174) H. W. Shepard, Jr. - Cross

Q It is not true?

A I don't know what the policeman's instructions are. But he is not stationed there for my particular convenience or to prevent people from coming into my garage, I feel certain of that.

Q Is he stationed there at all?

A He is not stationed -- as far as I know, again I can't talk for the Department of Public Safety --

Q I want to know whether you see a policeman there.

A I see a policeman at the corner of Fort Duquesne and Sixth Street, I see him sometimes in front of my garage. I see him at Penn Avenue and Stanwix Street. There is a corner man assigned to that location and there ought to be more.

Q I agree.

And when you see him there, what is he doing, he is directing traffic, isn't he?

A He is directing traffic, yes, sir.

Q You never saw him prohibiting a motorist from making a left turn into your garage?

A I can't recall.

Q Can you recall seeing policemen stationed directly in the vicinity of these other garages?

A From time to time, yes.

Q In your Stanwix Street Garage, when the stadium is being used

you do have a pretty full lot, don't you?

Yes, we do. It reduces the amount -- it reduces the amount of shoppers that we have. Actually our receipts are lower on a day such as that.

They use the stadium for a night affair for the most part?

Yes.

And when the people leave your garage after having attended a performance of some kind at the stadium there is quite a bit of traffic congestion because they are all leaving at the same time?

Not because they are leaving my garage. As a matter of fact, there is not a great deal of congestion because the people don't come all at once. There isn't any easy way to either get to the stadium or get from the stadium back to the garage, the boat can only hold so many people and they are spread among certain garages. I would imagine under present circumstances with Liberty Avenue all tied up, with Stanwix Street from Forbes Avenue to the Boulevard, with Fourth Avenue closed there could be congestion if more than five or six cars occurred at the corner at the same time.

Are you trying to tell me if I attend a Pirate baseball game and then go back to your garage to get my car, regardless of whether I take one of the shuttle busses or walk over the "Bridge to Nowhere" that when I get to your garage if I go

directly to it I will be able to get in my car and directly enter Stanwix, or whatever the street is adjoining the garage, and drive off?

A The worst problem you will have is getting past my cashier. This is where the major slowdown occurs.

Q In your garage. But after I get past your cashier I will be able to enter the throughway without any trouble?

A If there isn't a bus in front of me you shouldn't have too much trouble.

Q You made remarks about the population of the City of Pittsburgh. You don't mean to say, do you, that the downtown population of the City of Pittsburgh, the daytime population of the City of Pittsburgh, has decreased, do you?

A It would purely be a matter of opinion. I would say that it has been fairly stable. I would say that perhaps it has moved out. I would say in my opinion it has decreased or remained stable.

Q Are you taking into consideration the large office buildings that have been built recently and are still under construction?

A How far back do you want to go? If you are talking of from 1945 or '46 or the '50's when Gateway Center was built --

Q Let us go from 1967 to the present time. You don't think that the downtown daytime population of the City has decreased

do you?

Yes, sir, I do.

To what do you attribute that?

The large office building complexes that are being built in Greentree, the large office building complexes that are being built in Monroeville, the runaway -- actually, the run-away people who avoid the City taxes. I consider this has a great effect on the City. The J. & L. moved many of their people over to the South Side, while it's still within the City limits it's out of the core where these garages -- I could be wrong. It is my opinion that the downtown population has declined in the last three years and probably will continue to do so.

The construction of office buildings, of course, in your opinion results in increased population, but you say Greentree and Monroeville would have gone up.

Did you take into consideration the new office buildings built downtown?

I don't know how many square feet that the U. S. Steel Building has rented, but I think it's quite a little other than what they are occupying now, other than what the corporation intends to occupy itself.

You didn't investigate, you really didn't make a study of this problem, did you?

192a (178) H. W. Shepard, Jr. - Redirect

A I did not.

Q This is just your off-the-cuff opinion that you have given in direct examination and also under cross-examination?

A Yes, sir, and I said that.

MR. BOEHM: That is all I have,
Mr. Shepard. Thank you.

THE COURT: Any further questions from
this witness?

MR. BOREMAN: Yes, Your Honor.

- - -

REDIRECT EXAMINATION

BY MR. BOREMAN:

Q Mr. Shepard, that Stanwix Garage, that is on what street,
Seventh Avenue?

A No, Fort Duquesne Boulevard and Stanwix Street.

Q Stanwix Street leads into Fort Duquesne Boulevard and then
into the --

A Parkway system, yes, sir.

Q -- the bridge.

If cars are coming from the stadium -- are going to
the stadium going to other parking lots that are yours or
parking garages, they are going down Stanwix Street, they
don't park at your place, busses don't park at your place,
in other words, traffic is moving along Stanwix Street

H. W. Shepard, Jr. - Redirect (179) 193a

before the game and after the game, does your parking garage have any connection with that traffic?

We exit cars onto Stanwix Street. But, again, as I said, the cars are metered onto the street, they don't come out in a rush because each car has to pay the cashier at the exit and this lets one or two cars at a time onto the street.

If there is a big traffic light up from the Fort Pitt Boulevard all the way down to the Fort Duquesne Boulevard with cars and busses, -- and I am speaking about the cars on the street that never have been in your garage and never intended to go in your garage.

Under those circumstances we're out of business because a car can't get in or out if I have 600 cars in the garage that are still in there, there is no way to get out.

Are they contributing to that traffic jam?

They can't contribute to a jam if they can't get into it.

If that congestion is going past Stanwix Street, does that have any connection with your parking business?

That's no part of my business.

When you were referring to the decline in Pittsburgh, you were referring to the recent information on the census?

We were talking about the core. The City attorney's question referred to the core. The other question referred to a matter of record as to the census figures.

194a (180)

H. W. Shepard, Jr. - Redirect

Q Your statement about the core is just your opinion not backed up by any investigation?

A That's correct.

Q When you said that if you increased the rates that would increase the revenue -- did you say that?

A I said it has, yes.

Q What does that do about your net profit, does that increase it?

A It has not increased my net profit.

Q Why is that?

A Because the parking tax was increased substantially higher than I could increase my rates.

Q In the First Avenue Lot, let us refer to that, you lease that from Blue Cross?

A Yes, sir.

Q You said they tore down some buildings to expand the parking?

A Yes, sir.

Q Did you require them to tear down the buildings?

A No, sir.

Q Why did they do it?

A They purchased the property, they tore the buildings down to avoid paying taxes in 1970, building taxes.

Q Who are generally the parkers in that lot, are they the Blue Cross people in the building there?

W. Shepard, Jr. - Redirect

(181) 195a

Some Blue Cross, mostly all-day people in the general area.

So that the tearing down of the buildings and providing more parking space was not in any way connected with your choice or working in that direction?

I had nothing to do with the decision to tear down those buildings and turn it into a parking lot, no, sir.

From your observation would you say there are more or less policemen stationed around Horne's than in those areas around your garages?

I don't know what you mean, I'm sorry.

You were asked questions about a policeman stationed around your garage. Where are those policemen stationed?

They are stationed, at least to my knowledge, at the corner of Fort Duquesne Boulevard and Stanwix Street.

What are they doing there?

They are directing traffic.

They are directing traffic?

Yes. This is the major interconnection for downtown, as I see it, in the parkway system. So much of the parkway traffic flows past that corner. In other words, if you want to get to the North Side, this is a logical way to do it. If you want to get to the South Hills, Stanwix Street or Fort Duquesne Boulevard, which work with each other, are a logical way to do it. The Tenth Street Bypass, while it does

196a (182) H. W. Shepard, Jr. - Redirect
not actually occur -- the connection does not actually occur

at Stanwix Street, congestion on the Fort Pitt Bridge does not allow traffic to turn off Stanwix Street. In entering the Triangle, the opposite occurs. Stanwix Street and Fort Duquesne Boulevard is a major distribution point for traffic in the downtown area, and for this reason they need a policeman.

You are saying that the policeman is stationed for that purpose and has nothing to do with your garage?

MR. BOREMAN: He is leading the witness.

He is incompetent to answer the question.

THE COURT: Objection sustained.

(EXCEPTION NOTED)

THE COURT: Let us get onto something else here. You have been beating a dead horse here, I think, with regard to these traffic problems. We know that the officers are stationed at these various intersections not only down there but all around town.

BY MR. BOREMAN:

Q One more thing, Mr. Shepard.

When you appeared before City Council, was Plaintiffs'

Exhibit 1 prepared?

A No.

Did you show City Council any of the figures that you have in Plaintiffs' Exhibit 1?

No, sir, I did not.

Had you had them compiled at that time?

Oh, we have our own records, yes, sir, not in this form.

Did you give City Council any figures as to your business?

No, sir.

In any way?

I referred to the fact that my profits were down considerably,

yes, sir.

Without specific figures?

Without specific figures.

MR. BOREMAN: I have no further questions.

THE COURT: Have you finished your cross-examination on this witness, Counselor?

MR. BOEHM: I have one more question, Your Honor.

- - -

RECROSS-EXAMINATION

MR. BOEHM:

You made the statement, Mr. Shepard, that when you have increased the rates this really hasn't helped you too much after a raise in the parking tax because the increase in the

198a (184)

H. W. Shepard, Jr. - Recross

parking tax has actually been more than the increase in your revenue.

Yes, sir.

Now, take a look at your sheet with respect to the Stanvir Garage.

What I had reference to, sir, originally, was the one that we have been referring to, although it is not actually part of the evidence, it is one that you manage, that was the Parking Authority lot --

THE COURT: That is out of the picture here. Have you finished?

MR. BOEHM: I would like to have just a second, Your Honor, to take a look at this.

Your Honor, I would like to ask the witness, I think since he has testified about the operations of the Parking Authority lots, why it is that the Parking Authority lot revenues increase substantially more than the amount of the parking tax whereas his lots do not.

MR. BOREMAN: Objection, Your Honor.

MR. BOEHM: He has talked about managing these Parking Authority lots, he has told us they do not pay any real estate taxes and he

J. T. Stabile - Direct (185) 199a
has talked about the operation of that lot
so that I think he is competent to answer this
kind of a question.

THE COURT: We don't think it is relevant
at the present time. Accordingly, we will
sustain your objection, Mr. Boreman.

(EXCEPTION NOTED)

MR. BOREMAN: I have no further questions.

MR. BOEHM: I have no further questions.

THE COURT: You may step down, Mr. Shepard

MR. BOREMAN: Your Honor, I wonder if we
might have a five-minute recess.

(Recess taken.)

- - -

JOHN T. STABILE, called as a witness on
behalf of the Plaintiffs, having been first
duly sworn, testified as follows:

DIRECT EXAMINATION

MR. BOREMAN:

State your name and address.

John T. Stabile, 933 Osage Road, Pittsburgh, Pa., Zip Code
15243.

What business are you in, Mr. Stabile?

I'm in the parking business

200a (186)

J. T. Stabile - Direct

Q In the City of Pittsburgh?

A Exclusively in the City of Pittsburgh, Allegheny County.

Q How long have you been in the parking business?

A Since 1925, over 45 years.

Q How many parking facilities in the City of Pittsburgh do you operate?

A Approximately 42.

Q How many including Allegheny County?

A One position at the Airport.

Q What portion would you say you operate in the parking industry in the State of Pennsylvania?

A I'm the largest parking operator in Pittsburgh and Pennsylvania.

Q Do you operate as an individual, partnership or corporation?

A Partnership and corporation.

Q Who is your partner?

A Mr. Del Sardo.

Q Is he in the courtroom today?

A Yes.

Q Do you operate as a lessee of any Parking Authority garages?

A We operate four garages under the Parking Authority.

Q Which of your companies operates the Parking Authority garages?

A One company, Parking Service, operates the Ninth and Penn

J. T. Stabile - Direct

(137) 201a

Garage, Third Avenue Garage and the Boulevard Garage at Sixth and Bigelow. Alco Parking operates the Allegheny Center.

The Gateway Center Garage is not a Parking Authority?

No.

So you operate as a lessee of four Parking Authority garages?

Right.

Under the terms of your lease who is required to pay the parking tax?

We are required to pay the parking tax as part of an operating expense.

How about the Business privilege tax?

We pay that also.

And generally under the Parking Authority leases, do you pay a flat rental or percentage rental or combination of both?

We pay a combination of guaranteed rental plus a percentage.

Are you required to put up security for rent?

We have a \$300,000.00 security to meet our obligation.

Mr. Stabile, in Plaintiffs' Exhibit 1 would you turn to the Table of Contents and tell us which of these operations are your operations?

Alco Parking Corporation; William Penn Parking; Parking Service Corporation; Arena Parking, Inc.; Fourth Avenue Parking, Inc.; William Penn Parking Garage, Inc.; Campus

202a (188) J. T. Stabile - Direct

Parking, Inc. That's all.

Q And who operates Grant Parking, Inc.?

A That's operated by my son on a management basis.

Q What is his name?

A John T. Stabile, Jr.

Q The figures that are in Plaintiffs' Exhibit 1 with reference to your operations, will you tell us how they were prepared?

A These were prepared by our accountant plus our certified public accountant, J. K. Lazzer Company.

Q What was the work done with Mr. Buzzard?

A Mr. Buzzard looked over our records, we produced the records and he copied figures from our records.

Q Now, did you discuss the preparation of your part of Plaintiffs' Exhibit 1 with Mr. Buzzard at any time?

A Oh, yes.

Q Do you remember how long ago it was when you first began the preparation of this?

A I think it was either the latter part of May or early part of June because our case was coming up August 15 and it was postponed till now.

Q And in these allocations that Mr. Buzzard testified he made, did you in any way assist him in them or discuss them with him?

A Yes.

J. T. Stabile - Direct

(189) 203a

You heard him testify that he made certain allocations with respect to insurance and pensions. Are you familiar with the allocations he made?

He didn't make it exactly, but it comes out the same -- our pension is \$6.00 per man per week and hospitalization is \$33.28 per man per month.

How was the allocation made?

Well, if a garage has an average of four people we will charge \$6.00 per week per man and we charge \$33.28 per person per month.

Would you say the allocations which Mr. Buzzard finally placed in this exhibit are a fair reflection of the books and records of these various companies?

The way he computed it, it come out the same as the way I did it.

Are you familiar with the figures that went into this exhibit as far as your companies are concerned?

Yes.

And you testified they were taken from your books and records?

Right.

Are they true and correct?

As far as I know, I'll say yes.

Mr. Stabile, you have been in the business since 1925?

204a (190)

J. T. Stabile - Direct

Q You operate approximately 42 lots in Pittsburgh?

A Yes.

Q And I think you said you were the largest operator in Pittsburgh and Pennsylvania, as a matter of fact?

A Yes.

Q Will you tell us what is the normal rate of return in operating a parking facility?

A We expect from ten to twelve per cent minimum.

Q Can you tell us upon what basis you arrive at that?

A Well, which way do you mean?

Q Why don't you say five per cent or twenty per cent?

A Because some money is on a long-term lease -- we must have twelve or more to be on the right side of the ledger in future years. We may start out at fifteen or twenty, and by the time the lease expires we might wind up around ten.

Q And you heard yesterday the reference to Allegheny Center?

A Right.

Q Is that a profit making operation?

A That is not a profit making operation. It's one of my miscalculations.

Q I think you put up a security deposit to guarantee your lease, didn't you?

A We put a security deposit of \$525,000.00 at market value. If the value has dropped we add, and in the last 90 days

J. T. Stabile - Direct (191) 205a

added \$200,000.00 to keep it up to \$525,000.00.

How long is your lease at Allegheny Center?

It expires in 2013.

Why did we take the Allegheny Center lease out of this Exhibit 1?

It seemed out of balance, and I don't think it would be fair to show in this book because it would unbalance the thing.

The loss is \$207,000.00. I hope it will come down as years go by.

Now, our profit -- our loss would have been less had not it been for the parking tax.

Why do you say that?

Because we had to pay 20 per cent of gross.

Irrespective of whether you made a profit?

Profit or not.

Now, Mr. Stabile, you also operate a lot at the Roosevelt Hotel. Which of these companies operated that?

William Penn Parking Lot.

Are you still operating that lot?

Now, wait a minute, that was two lots which we operated as one.

As lessee?

No, as owner. We own the property.

Who owned the property, which company?

206a (192)

J. T. Stabile - Direct

A William Penn Parking Lot. We sold a portion of it to the Roosevelt Hotel.

Q When?

A In November of 1969. They took possession January 1 and operated the lot for themselves so they could take care of their hotel customers. Then we made new entrances at the annex lot and we have no comparison.

Q Why was it left out?

A Because it showed too much of a loss. It was a beginning operation. We had new entrances and new exits. The lot originally was opened in 1936 and people were in the habit of going below, and when we split the lot they haven't learned to come into the new location.

Q And so you left it out because you felt the comparison could not be made?

A Right.

Q Did that lot ever show a profit?

A It did.

Q In what years?

A Oh, 1950 to 1962.

Q How about after the parking tax?

A Since that it's gone down. It's a combination of parking tax and increase in property tax is diminishing our rate of profit.

J. T. Stabile - Direct

(193) 207a

When you sold the portion of the lot to the Roosevelt Hotel,
was the parking operation showing a loss?

Just breaking even.

Breaking even?

(Witness nods head.)

That would be in 1969?

Right.

I believe you also have an arrangement for operating the
parking facility at the Carlton House Hotel in Pittsburgh?

Yes.

Will you tell us about that?

That's on a management-fee basis. We operate the garage
for the Carlton House. We furnish the help, we supervise the
help, we do not count the money.

Yes do not collect the money?

We do not collect the money. The hotel itself collects the
money and we don't know what they get, or anything; but
every six months or yearly they send a statement of what they
took in and what they made or lost.

So what you do is simply have a management arrangement to
supervise the employees?

Yes.

How much do you get for that?

\$6,000.00 a year.

208a (194) J. T. Stabile - Direct

- Q And that is why you left it out of this?
- A Right.
- Q It is not one of your operations except on a management basis?
- A Right.
- Q Now, Mr. Stabile, in working with Mr. Buzzard, what instructions did you give your accountants and controllers?
- A To give Mr. Buzzard anything that was needed, show him anything he wants and give it to him.
- Q Did you hold anything back?
- A I did not.
- Q Did you give your accountants or Mr. Buzzard any instructions that you wanted him to show less profit or a loss?
- A No, sir.
- Q So to the best of your knowledge those records are accurate and correct --
- A Accurate.
- Q -- of your business operations?
- A And I have a statement from J. K. Lazzer as to their accuracy.
- Q Mr. Stabile, you are the one, I believe, who has been involved in negotiations with the new Three Rivers Stadium Parking?
- A That's right.
- Q Have you signed a lease for that facility?
- A We signed a lease -- let's go a little bit further. I was

a letter of intent in April of 1962.

1962?

Guaranteeing them \$500,000.00.

Was the parking tax in effect at all then?

It was not in effect then.

You guaranteed \$500,000.00 a year for how many years?

For 40 years which made it \$20,000,000.00 I guaranteed.

Which of your companies?

Alco Parking. In order to prove our ability for it we had to put up \$500,000.00 to guarantee our rent. Since then --

You may ask "Why so high," and everything else. We presented the place for \$650,000.00, \$500,000.00 rent, that leaves us \$150,000.00 gross profit to pay everything.

Since then we had a 20 per cent parking tax. Now, that will come to \$500,000.00 for rental, 20 per cent of \$650,000.00 is \$130,000.00 parking tax, that leaves \$20,000.00 to pay help and everything.

I presented this argument in Council. I had a lengthy discussion in Council. I said, "Do not pass this tax. This can hurt the financing of the stadium."

And their answer was it wouldn't. They didn't want our streets being worn out. I'd rather have worn out streets than have grass growing on it.

Are you going to carry out the terms of that?

A I don't think I will. I cannot meet it. I'm not going to take an obligation on that I'll lose \$50,000.00 a year out of pocket.

Q Have you had discussions about modifying or canceling this lease?

A Yes, I have.

Q On what basis do you expect to cancel?

MR. BOEHM: I object to this line of testimony, Your Honor. This is irrelevant, incompetent and immaterial.

MR. BOREMAN: It is all right with me. I wanted to show Your Honor whether it is capable of being canceled or not.

THE COURT: The point is that because of the tax he can't operate the lease.

BY MR. BOREMAN:

Q You also have a negotiation to operate a parking facility at Shadyside Hospital?

A Yes.

Q What happened there?

By the way, when did you have those negotiations?

A The last of December of 1969.

Q What happened there?

A In that agreement we was supposed to build and lease both

J. T. Stabile - Direct (197) 211a

the hospital and then manage for the hospital. In the projection -- in that projection we took in \$240,000.00 and our expenses including parking tax come to two hundred eighty-eight, I'm giving you round figures, and the loss was \$48,000.00.

That was with the 15 per cent parking tax?

Fifteen per cent parking tax. The parking tax was

\$36,000.00 at 15 per cent plus the privilege tax was

\$1440.00. The hospital could not absorb this loss and

neither could I, so thereby they went into a different arrangement.

And you are not going to go into that venture?

No.

And if the parking tax is 20 per cent the loss becomes greater?

It would be a whole lot greater.

So you have abandoned that venture and the hospital --

Abandoned it.

THE COURT: What is the privilege tax, how much is that?

THE WITNESS: Six mills of the gross.

THE COURT: Is that what we call an occupation tax?

THE WITNESS: No, that's a business

212a (198)

J. T. Stabile - Direct

privilege tax. That's a tax for the privilege of us doing business in Pittsburgh.

THE COURT: That is six mills?

THE WITNESS: Six mills.

THE COURT: What is that based on, your gross profit?

THE WITNESS: Gross profits.

MR. BOREMAN: Gross receipts, the same identical basis.

MR. BOEHM: Your Honor, the ordinance has been offered in evidence. I think the ordinance will speak for itself rather than have the legal testimony come from laymen.

THE COURT: Was that ordinance with respect to that particular tax offered in evidence or was it the one on the parking tax?

MR. BOREMAN: They both were, Your Honor. It is Exhibit 9, I think. Yes, Exhibit 9.

BY MR. BOREMAN:

Q Mr. Stabile, in looking over Exhibit 1, you note that there are a number of your operations that show losses?

A Right.

Q With that situation, why do you stay in the parking business?

A I've been in the parking business for 25 years and some of

J. T. Stabile - Direct (199) 213a

these were made prior to the parking tax. We made a profit, but since the parking tax we have gone down.

Now, some of these leases will come into renegotiation. They have come into new landlords that want a profit and they have intimated to me that they are not going to -- so what I would do at those locations, I will give them back to them. And how about the leases that make a profit?

They are subject to negotiation, too, after the lease expires. Suppose they show a profit of less than ten per cent, what do you expect to do?

MR. BOEHM: Your Honor, I object to the questions as to what this man may or may not do in the future.

THE COURT: We will sustain your objection.

(EXCEPTION NOTED)

MR. BOREMAN:

I have one more question.

Mr. Stabile, do the police render you any special services in operating your parking lots?

No, they do not. Three years ago I'd asked to have a policeman. They said, "If you want one, you will have to pay for it."

Specially?

- A Yes.
- Q As a parking operator, do your garages cause traffic congestion?
- A They do not. They prevent traffic. They take cars off the street.
- Q Are there any tieups on the streets when your cars exit or enter the parking garages?
- A No, there are not.

MR. BORLMAN: I have no further questions.

- - -

CROSS-EXAMINATION

BY MR. BOELM:

- Q People drive their automobiles downtown because they know there are parking garages like yours where they can put their cars.
- A They don't park downtown to park, they come downtown to spend money.
- Q I say they drive their cars downtown.
- A Yes.
- Q That is not the only way of getting downtown.
- A No.
- Q You can get downtown on a bus, depending on where you live, right?

That's right.

You said in answer to one of Mr. Boreman's questions that you expected a fair return of ten per cent on your parking business.

Yes, minimum.

What you mean by that is a fair return of your initial investment or your investment in your business, is that right?

That's right.

And when you are, like Mr. Shepard, managing for a fee a certain parking lot you have, I guess, virtually no investment in that kind of a business, right?

That's right, no investment except time.

When you do that, what is your percentage that you receive?

What's that?

Your management fee.

It all depends on how much work is required of me.

What is the ordinary fee charged?

Anywhere from seventy-five to ten thousand plus a percentage of the profit.

It is usually a lump sum plus a percentage of the profit?

Yes.

Of the net profit or the gross revenue?

Net profit.

Do you manage any garages for the Parking Authority?

MR. BOREMAN: That is objected to, Your Honor. He has already testified he is a lessee at four Parking Authority garages. That is different from managing.

MR. BOEHM: That is what I am asking.

THE COURT: The witness has already answered your question.

(EXCEPTION NOTED)

BY MR. BOEHM:

Q But you are, as Mr. Boreman suggests, a lessee, you lease from the Parking Authority four garages?

A Yes.

Q And you work those on a management fee?

A What's that?

Q You work those on a management-fee basis?

A No, that's a guaranteed rental. We pay the parking lot a guaranteed rental which really amounts to the amortization of the bond in 30 years plus a percentage of the profit.

Q Are the garages that you lease from the Parking Authority part of Exhibit 1 which was prepared by Mr. Buzzard?

A Yes.

Q Which garages are they?

A They are the Boulevard Garages at Sixth and Bigelow, Third Avenue Garage, Ninth and Penn. We've deleted Allegheny

from this Exhibit 1.

Mr. Stabile, about 80 per cent, I suppose, of the lots that are included in that Exhibit 1 are yours, right?

Right.

What would be your estimate of the percentage of parking operations downtown owned by you or one of your corporations?

55 to 60 per cent.

Have all of your operations paid their parking taxes currently?

We have. At least three months of the year we give them the whole use of the office and we couldn't get away from that.

And you are paid to date?

Right.

Do you have Exhibit 1 in front of you, Mr. Stabile?

Yes.

Would you please turn to the parking rate section following the Alco Parking Corporation statement.

Do you have it?

Yes.

The first one is the Allegheny Center Garage.

MR. BOREMAN: We have eliminated that.

That was left in there by mistake.

MR. BOREMAN:

Forget about that one.

The Sixth and Penn Garage is the next one?

A Yes.

Q Your rates are effective as of February 1, 1969?

A Right.

Q Have you made any change in the rates since that time?

A No changes.

Q Is that the date that you established the rates there on that page?

A Yes.

Q Do those rates represent an increase over what the rates formerly were?

A There is an increase of five per cent, and in some instances we did not raise it five per cent.

Q Is the same thing true with respect to the Greyhound Garage which is on the next sheet?

A Right.

Q An approximate raise of five per cent there also which became effective February 1, 1969?

A Right.

Q Has there been any change in the rates since that time?

A No.

Q The I.B.M. Garage which is the next one, you changed the rates on December 31, 1969, is that right?

A The only change there has been through the insurance company. They requested our monthly rates to be raised, and that's

what we did. The daily rate has not changed.

On December 31, 1969, however, at the I.B.M. Garage, the rates were changed, right, effective as of that time?

Yes.

Has there been any increase since that time?

In the daily rates, no.

Has there been an increase of another kind other than the daily rates?

There has been a monthly rate increase. That was requested by the landlord, and we recommended not to but they said, "We control the rates and that's it."

The monthly rate was increased from what to what?

Forty-four to forty-nine.

MR. BOREMAN: I would like to record an objection on the record. As counsel knows, the monthly rate is not subject to this tax. It is residential parking so it is immaterial.

MR. BOEHM: The witness says it is not.

THE WITNESS: The I.B.M. Building is subjected to parking tax. There is nothing residential.

MR. BOREMAN: I withdraw the objection.

MR. BOEHM:

Mr. Stabile, would you now keep that place where we are at

220a (206) J. T. Stabile - Cross

the I.B.M. Garage rate sheet and look back to the sheet for the I.B.M. Building Garage, the financial statement. You show an increase of revenue from 1968 to 1967, a projection of -- 1968 to 1970. I am comparing figures for 1968 and 1970. You say there is an increase from 1968 to 1970 of \$11,000.00 in the revenues and an increase in the parking taxes from 1968 to 1970 of \$11,000.00, right?

A Yes.

Q That the revenues and the parking taxes were approximately the same in spite of the fact that the rate was increased effective December 31, 1969?

A In '70 there's one month at 15 per cent and eleven months at 20 per cent. These are projected figures. This is not actually what we paid to the City for 19 --

Q I understand that, sir.

A On the next rate sheet has there been no change in the rate since 1968 at the Gateway Towers Garage?

A Where?

Q Gateway Towers, that is the next one.

A No increase in 1970.

Q There has been an increase?

A No increase.

Q Was there an increase in '69?

A Yes.

Does that show on the sheet which is part of this exhibit?

Yes.

What was the change in 1969?

We increased the rate of residential parking and the public parking, and this was done also at the request of the land-
lors.

What was the change?

MR. BOREMAN: Here I object, Your Honor,
as to anything concerning residential parking.
Gateway Towers is a residential area.

THE WITNESS: Right.

THE COURT: We will sustain your objec-
tion to anything with respect to residential
parking.

(EXCEPTION NOTED)

THE COURT: As I understand it they have
other parking there. What is the rate change
with respect to the other parking as distin-
guished from residential?

THE WITNESS: We have made no changes
since '68.

MR. BOREMAN: Clarify it. You said the
opposite before.

Your Honor, I just think he wasn't clear

222a (208) J. T. Stabile - Cross

and I pointed out that we were referring to Gateway Towers.

MR. BOEHM: Let Mr. Stabile tell us whether he was clear or not.

THE WITNESS: I cannot recall everything at one time. My mind has to be refreshed.

BY MR. BOEHM:

Q Are you saying now that on the Gateway Towers Garage there was no increase in the commercial parking?

A Right, since '68.

Q Since 1968?

A Right.

Q On what date in 1968 did the latest increase become effective?

A I don't know the exact date, but -- I don't know the exact date.

Q How about the Manor Garage. Mr. Stabile, do you remember the increases at your various garages without double checking Mr. Buzzard's figures?

Do you understand my question?

A I can't remember 42 locations. If I get to my files then I recall.

Q Do you have your files with you?

A These are exactly like my files (indicating) are.

J. T. Stabile - Cross

(209) 223a

Do you have your files with you?

Go.

Do you remember when the last increase was at the Manor Garage?

February 16 -- February of '69, February 1, 1969.

Do you remember how much the increase was; was it five per cent, approximately?

About that to take over the -- in that garage, too, we do not control prices. We have to have permission from the landlord.

How about the P & L E Lot?

(No response)

Have you had an opportunity, Mr. Stabile, to review the figures that were prepared by Mr. Buzzard and set forth in Exhibit 1?

I've helped to compile this. I gave him a sheet. After he compiled it from my figures then I looked this over.

Have you had an opportunity prior to today to review the figures which he prepared for you?

Yes, I did.

When did you do that?

Last week, about a week.

About a week ago?

(Witness nods head.)

Q Was the booklet in the form it is right now when you reviewed those figures?

A Yes.

Q Then, you are familiar with the figures in this book?

A Yes.

Q Would you say that in all instances where he has set forth the rates as being effective as of a certain day that means that that is the first time that that rate went into effect?

A The new rate, yes.

Q And in all cases it represents an increase over what the prior rent was?

A Increase.

Q Is it in most cases approximately five per cent?

A Five per cent.

Q That is what you have been raising the rates when you have raised the rates?

A Look here, when you say percentage, it all depends. If you have a 35 cent rate and it changes to 50 -- don't hold me to that percentage.

Q The day rate, for example, would be a rate that would be raised approximately five per cent?

A Take care of the five per cent.

Q Open Exhibit 1, Mr. Stabile, to the financial statement for the Gateway Towers Garage.

J. T. Stabile - Cross

(211) 225a

Now, take a look at the revenues for 1968 as compared to 1970 and the parking tax in 1968 as compared to 1970. Would you say Mr. Buzzard has inserted the correct figures there?

MR. DOREMAN: Which one was that again?

MR. BOLLM: Gateway Towers.

THE WITNESS: I have it.

MR. BOLLM:

Do you see them?

Yes.

The revenue has increased more than the parking taxes, right?

That's right, because of being residential parking.

You mean residential parking is included on this statement?

On this one, yes. It tells you a notation, "Includes revenue from tenant parking on which no parking tax is paid."

Now about the operating expenses with respect to the Gateway Towers Garage, did you help Mr. Buzzard prepare those figures?

He has our payroll figures. He has access to our payroll.

Do you know whether he wrote out the operating expenses relevant to the residential parking on which no tax is paid?

No.

He has all the operating expenses in there from that garage?

Right.

Look at the financial statement for the P & L E Lot, a few

226a (212) J. T. Stabile - Cross

sheets back there.

A I have it.

MR. BOREMAN: No, he doesn't have it.

He means the individual one.

BY MR. BOEHM:

Q Now, compare the revenues for 1968 with 1970 and the parking taxes for 1968 with 1970.

A Yes.

Q Would you agree with Mr. Buzzard's figures there?

A I think they are a little bit optimistic on this lot.

Q You think he is being too optimistic, did you say?

A Yes, on the projection of the last six months.

Q Then, you disagree with his figures, is that right?

A Yes.

MR. BOREMAN: Just a minute. That is

objected to, Your Honor. I want to make sure

the witness understands the question. He said

he disagreed with the projection, not the

figures.

THE WITNESS: Yes, the projection.

BY MR. BOEHM:

Q Mr. Stabile, looking at the same financial statement, compare the figures for 1968 and 1969 on revenues with the taxes for 1968 and 1969. Do you agree with those figures?

J. T. Stabile - Cross

(213) 227a

Do you mean the parking tax?

Comparing the parking tax increase from 6,000 to 11,000, 1968 to 1969.

1968-1969, I do. In 1970 they are projected.

I am just asking you about 1968 and 1969 now. We have already talked about 1970.

Yes.

You do?

Yes.

Your parking taxes increased less than your revenues?

I don't understand.

In other words, you were able to set off the parking tax by an increase in the revenue?

Wait a minute.

I will withdraw it. I think it speaks for itself unless you want to explain it.

MR. BOREMAN: I object, Your Honor. The record speaks for itself.

THE COURT: All right.

MR. BOEHM:

Mr. Stabile, on the White Tower Lot, how many U. S. Government vehicles park there?

Oh, --

MR. BOEHM: Does the Court have the

228a (214)

Colloquy

sheet, the footnote there?

THE COURT: There are some of the details missing in this exhibit, that is the breakdown of the various garages. I have the summary here on the rates, however.

MR. BOREMAN: Excuse me, Your Honor. Your Honor has a copy that doesn't have the breakdown of the Alco Parking.

THE COURT: It has the Alco but it doesn't have some of these others.

MR. BOREMAN: I am sorry, Your Honor. We certainly should have given you a complete

THE COURT: I am talking about the individual breakdown of all of the expenses and the parking facilities you have listed there. Some of them you have talked about here are not even listed.

MR. BOREMAN: Here (indicating) is Gateway, Your Honor; here (indicating) is I.D.M.; here (indicating) is the P & L E; and here (indicating) is the one that he is talking about right now. They are right after the summary sheet.

THE COURT: Oh, I see.

J. T. Stabile - Cross

(215) 229a

THE WITNESS: In this location we rent

the Government so many square feet for the use of their own parking. We prepare a lease. We don't handle their cars, they drive the car in and put it there.

Q. BOEHM:

How many cars, sir?

I don't know how many cars. I'll have to see what the lease calls for, how many square feet of land they rent from us.

There are a total of 60 spaces, is that right? That is what Mr. Buzzard says.

That's the size of the lot, 60 cars.

Does that mean it will accommodate 60 cars?

Right.

Do you know how many cars are allotted to the U. S. Government?

I don't know. We rent them X number of square feet.

You don't have any idea whether it is 55 or 58?

Oh, no, it's very little, about eight or nine.

And on those eight or nine spaces you don't pay any parking tax?

Right.

Do you agree with Mr. Buzzard's figures for the 1968 revenues,

1970 revenues and his 1968 parking taxes and his 1970 --

In this projection it's a little high, in 1970. These are

230a (216) J. T. Stabile - Cross
Pennsylvania Railroad lots.

Q They are what?

A These are lots owned by the Pennsylvania Railroad leased to us. I was called in their office, they want to know why we raised the parking rates and their revenue is down.

Q This is the White Tower Lot?

A That's owned by the Pennsylvania Railroad, that whole vicinity.

Q Sir, remember the question I asked you.

Look at Mr. Buzzard's figures where in 1968 he shows your revenues to be \$35,252.00; 1970, \$50,162.00, and then look at the figures for the parking taxes, 1968 as compared with 1970.

A In that location the projection is a little high.

Q You disagree with Mr. Buzzard's projection there?

A That's on account of the area.

Q Now, compare the figures for 1968 and 1969 that Mr. Buzzard has prepared and those are actual figures, as I understand, from your books?

A Right.

Q Do you agree with those?

A I do.

Q There you can see the parking tax from 1968 to 1969 increased \$2,000.00 and the revenue increased \$8,000.00.

Eight or nine thousand I suppose would be better. More than 9,000.

9,400.
You have reviewed the exhibit prepared by Mr. Buzzard, so I don't have to continue going through these separate lots for you.

You agree certainly with the figures that he has inserted for revenue in 1968 and 1969, right?

I agreed with the figures before he compiled it in this book.

Before he compiled them in that book you agreed to them?

Yes, because he had one big sheet and I reviewed them.

After he compiled them in the book didn't you look at them?

Yes.

And did you tell him that you disagreed with them in some respect after you looked at them?

No, only on the projection, certain locations, due to the location of a lot.

You disagree on his projections?

On certain locations.

Do you agree 100 per cent with him on the figures that he has used for 1968 and 1969?

I do.

None of your investment is reflected in Mr. Buzzard's

232a (218) (SIS) J. T. Stabile - Cross

Exhibit 1, is it, Mr. Stabile? Your investments are not reflected there at all?

A No.

THE COURT: Have you any further cross-examination of this witness?

MR. BOEHM: I doubt it, Judge, but I would just like maybe another ten seconds.

BY MR. BOEHM:

Q Mr. Stabile, do you have the figures on the number of cars that you parked during the first six months of 1969 as compared with the number of cars that you parked for the first six months of 1970?

A They are available but they are not on this report.

Q In other words, you made them available to Mr. Buzzard, right?

A If he wanted them, if he'd ask for them.

Q Did you make them available to him?

A No, I did not.

Q You didn't give them to him?

A No. You are talking about the number of cars. That's not in this report, but I did give something to Don McNeil, his employer.

MR. BOEHM: I have no further questions.

MR. BOREMAN: May I just take about two minutes so we can get through with Mr. Stabile?

J. T. Stabile - Redirect

(219) 233a

before lunch?

THE COURT: All right.

- - -

REDIRECT EXAMINATION

MR. BOREMAN:

Did Mr. Buzzard or Mr. McNeil ever ask you to give them the number of cars?

I gave them to Don McNeil. I said, "If you have to use them, use them, but don't do it unless you have to."

You didn't want to make them public unless you really had to have to.

When you said you disagreed with the projection of Mr. Buzzard, do you mean you disagreed with his entire 1970 projection or only with the gross revenue?

At certain locations. He's low on some and high on some.

You mean in his gross revenue?

Yes.

MR. BOEHM: I object to you leading the witness.

MR. BOREMAN:

Do you agree with the other items in the projection?

Yes.

Will you tell us which ones you disagree with?

MR. BOREMAN: Your Honor, I am not sure

234a (220)

J. T. Stabile - Redirect

he understands the question.

THE COURT: He understands the question. He has given you the answer a half dozen times that he disagreed with some of the projections in 1970 and some of the locations because of the locations.

MR. BOREMAN: Does he disagree with the revenue or the other items in the projection is what I want to know. If he can answer "Yes" or "No" we won't go any further.

THE COURT: I think he has testified that he agreed with everything else.

THE WITNESS: Yes.

THE COURT: With the exception of this projection for 1970 in some of the areas because of the location.

MR. BOREMAN: I will withdraw the question. One more question I have and that is all.

BY MR. BOREMAN:

Q You have testified you paid the parking tax for 1970. Did you pay it under protest or not?

A I paid it under protest, that is the first and second quarters.

MR. BOREMAN: That is all.

Colloquy

(221) 235a

THE COURT: You may step down.

Gentlemen, we are going to recess now
until 1:30 promptly.

(Luncheon recess taken.)

7

236a (222)

P. B. Smith - Direct

SEPTEMBER 16, 1970

Wednesday Afternoon Session

- - -

MR. MARKS: The Plaintiffs call Peter Smith, Your Honor.

- - -

PETER B. SMITH, called as a witness on behalf of the Plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MARKS:

Q Mr. Smith, will you state your address and occupation, please

A My address is 78 Dudley Road, Sudbury, Massachusetts.

I'm Northeast Regional Manager for Meyers Parking System.

Q How long have you been associated with that firm?

A Since 1965.

Q What are your present responsibilities?

A I cover all the operations throughout New England and Northern New York State.

Q How many facilities does that include?

A Approximately 40.

Q What were your prior positions with the company?

A I came to Pittsburgh in '65 as city manager to basically open

P. B. Smith - Direct

(223) 237a

up the Chatham Center operation and expanded in '67 to include our operations in Ohio and later Milwaukee and St. Louis.

How long were you based in the Pittsburgh area?

Five years.

That ran from January of 1965 until September of this year? Mid '65.

As part of your responsibilities did you supervise the Chatham Center operation?

From its inception.

How many years have you been in the parking business all told? Since 1953.

What is the size of the Chatham Center facility that is operated by Meyers Parking System?

2200 cars.

Will you describe the physical location for us?

It's basically on the corner of Fifth Avenue and Washington Place with a four and a half acre redevelopment project which includes the 2200-car garage, a 600-seat theater, the largest Howard Johnson Motor Lodge which has 413 rooms, a 10-story office building and a 20-story apartment building.

Will you describe what type of lease Meyers has and the obligations under the lease?

Meyers Parking System has a 20-year lease, and our obligations

238a (224) P. B. Smith - Direct

yearly are \$480,000.00 guaranteed.

Q In other words, Meyers' signature on that lease really represents a commitment of something on the order and magnitude of nine to ten million dollars?

A That is correct.

Q Now, I show you what has been marked and received in evidence as Exhibit 1 and show you the statements relating to Meyers Parking System and ask you if you can identify those.

A Yes, I can.

Q What is that document?

A These are assembled in New York from figures supplied to our accounting department in New York by the local operation here.

Q That is the one that you supervised?

A That is correct.

Q Are you familiar with these figures as part of your duties as supervisor in this area?

A Yes, sir.

Q Are those figures true and correct to the best of your knowledge?

A Yes, they are.

Q Were you the regional manager here when the parking tax rose in February of 1969 from a ten per cent rate to a

P. B. Smith - Direct

(225) 239a

fifteen per cent rate both taxed on gross receipts?

Yes, sir.

Now, what were the rates that were in effect at the Chatham Center garage prior to this tax increase?

Prior to the increase we ranged from 25 cents the first half hour up to \$1.75 for 24 hours. The six-to-twelve hour rate which took in most of the customers was \$1.25.

Did you raise the rates in February of 1969 in response to the tax increase?

That we did.

Can you tell us what the new rates were?

The new rates, the first half hour remained 25 cents; the 24-hour rate was increased to \$2.00 and the eight-to-twelve hour rate went to \$1.50. In effect we increased the all-day parker by 25 cents.

Now, as the regional manager being based in Pittsburgh, what were the results that you observed after this increase was put into effect by Meyers?

We saw a decline in the number of cars using the parking facility.

Can you tell us prior to the raised rate what your experience was at the garage with regard to the morning hours?

We were turning cars away between 9:30 and 10:00 every morning Monday through Friday. After the rate increase in

240a (226)

P. B. Smith - Direct

February we no longer experienced this great demand.

Q Were there any results with regard to the number of employees at this facility after the increased rate went into effect?

A Yes, due to the decline in business it necessitated us eventually cutting the cashiers' staff by two.

Q Was there any change in the attendants' staff?

A Later on we cut back some attendants.

Q Did you have any conversations with the customers of the garage with regard to the effect of the rate on their parking at the Meyers' facility?

A Yes. Customers would take me aside and --

MR. BOEHM: I object, Your Honor. This is hearsay.

MR. MARKS: I think it is relevant, Your Honor, to describe the customers saying that it was because of the rate and not something else that they left the facility and went elsewhere. What we are trying to show is that it isn't possible to pass onto the customers this increased tax.

MR. BOEHM: I am not objecting to the grounds of relevancy, I am objecting because it is hearsay. I can't cross-examine -- that customer is not here.

P. B. Smith - Direct

(227) 241a

THE COURT: You have a point there.

Rephrase your question, Counselor.

We will sustain your objection.

(EXCEPTION NOTED)

MR. MARKS:

Did you observe old customers no longer coming into the garage after the rate increase went into effect?

Yes, I did.

Did you observe where these customers parked their cars afterwards?

I would notice these customers' cars in lots further out from the central business district.

THE COURT: Was there any difference in the rates of the lots further up?

THE WITNESS: Yes. They are less expensive.

MR. MARKS:

With regard to October of 1969, was there an increase in wages due to a union contract?

Yes, there was.

Did you at the Meyers' facility at Chatham Center again attempt to raise the rates and pass it onto customers, if possible?

Yes, we did.

Q What were the new rates?

A The new rates again were holding at 25 cents for the first half hour and going up to a 24-hour maximum of \$2.25 and increasing the eight-to-twelve hour parking to \$1.75, another quarter.

Q What results did you observe as manager of this facility under your supervision after the increase?

A We experienced four to five hundred empty spaces per day after this rate increase.

Q Ultimately as a result of the falling off of the number of cars entering this facility did Meyers close off one floor of the parking garage?

A It necessitated us closing the lowest floor, and also we cut down some more of the personnel because of the lack of business.

Q Now, as of the beginning of 1970 can you tell me approximately how many vacancies there were on a daily basis at the Meyers Chatham Center facility?

A Four to five hundred cars.

Q Were you the regional manager of that facility and others in this area when the present tax went from 15 per cent up again to 20 per cent in February of 1970?

A Yes.

Q Did you discuss the possibility of raising the rates again?

P. B. Smith - Direct

(229) 243a

January of 1970 in an attempt to try and pass on this increase?

Yes, we did; but due to the fact of the tremendous number of empty spaces in the garage we felt it was impossible to do this.

What did you feel the result would have been if you would have attempted to raise the rates?

We would have had no business whatsoever.

As of this month in September of 1970 has the rate charged by the Meyers Chatham Center facility been changed?

Yes.

What was the change this time?

We put in an early bird rate reducing the all-day parker to \$1.25.

In other words, you this month reduced the rate, is that right?

That's right.

What was the purpose of that?

To get some of our customers back.

In other words, you had lost so many customers over this period of the raise increases that you are now reducing the rates in order to draw back some of the Meyers' customers who had been regulars previously?

That is right.

Q Now, looking at the 1969 and 1970 figures on Exhibit No. 1 that relate to Meyers, can you tell me whether the gross revenues increased somewhat between 1969 and the 1970 projection?

A Yes.

Q Now, apart from the parking tax item that is shown on those figures, if you took all the other expense items reflected on those charts with the expenses that Meyers incurred in 1970, would they be less than the ones that occurred in 1969?

A Yes.

Q And the revenues went up?

A Yes.

Q The net operating income on the projection for 1970 shows, despite the fact that revenues were going up somewhat and expenses were going down, the operating income was even less than it was the year before.

A That is correct.

Q What in your opinion is that attributable to?

A The parking tax.

Q And solely the parking tax?

A Yes.

Q What was that increase in terms of dollars between the parking tax in 1969 and the projection for 1970?

A 1969 was 126,000 and the 1970 projection around 199,000.

P. B. Smith - Direct

(231) 245a

Q In other words, an increase in the parking tax alone of about \$73,000.00 for that one year, is that correct?

A That's correct.

Q That more than offset the increase in projected revenues for that year?

A Correct.

Q There has been some statement here with regard to the University Health Center figures not being included in Exhibit 1.

A I wonder if you could tell us what that center is and what Meyers does in that center?

A The University Health Center garage is a 430-car garage built by the Parking Authority of Pittsburgh and leased to the University of Pittsburgh Diagnostic Clinic, Presbyterian Hospital, Children's Hospital and the Eye and Ear Hospital. Meyers System operates it for the University group on a flat management contract.

Q What does Meyers get paid?

A We are paid \$625.00 per month.

Q And Meyers has no lease?

A That is correct.

Q How long is that Meyers contract for?

A Three years.

Q When was that facility opened?

246a (232)

P. B. Smith - Direct

A We opened that facility December 28 -- the latter part of December of 1968.

Q As part of its operations does Meyers get reimbursed by the Center including taxes?

A Yes.

Q Does Meyers prepare an operating report for the Center?

A No.

Q This is a Public Parking Authority operation?

A Yes.

Q To your knowledge does the Parking Authority pay any real estate taxes on this facility?

A Not to my knowledge.

Q Even with that tax exemption are you aware of whether the Health Center group has shown any profit on this University operation?

A I had been told by the controller of Presbyterian Hospital -

MR. BOEHM: I object, Your Honor. This is hearsay.

THE COURT: Sustained.

(EXCEPTION NOTED)

BY MR. MARKS:

Q Are there any policemen stationed at Chatham Center?

A No.

Q Does the City render any special services to the Chatham

Center garage or area?

No.

When there are events of one kind or another that attract large numbers of people to the Civic Arena, does that result in increased parking at the Chatham Center Garage?

Yes, it does.

In that connection does the city provide additional police for that?

They do not. If I need additional police I have to call for them and pay for them ourselves.

When you say additional police, who do you usually call for? Their off-duty policemen.

You mean city policemen who you pay money on their off-duty hours to pay for this?

Yes.

MR. MARKS: I have no further questions.

- - -

CROSS-EXAMINATION

MR. BOEHM:

Mr. Smith, you have said that you contract with the owners, I suppose, of the land that you lease there at Chatham Center for a \$480,000.00 guarantee at your rental, is that right?

Yes, sir, plus a percentage.

248a (234)

P. B. Smith - Cross

Q Plus a percentage of what?

A That is the guarantee. There is a percentage of the gross, escalations over and above that.

Q Of the gross what?

A Revenues.

Q Do you have in front of you Exhibit 1, sir?

A Yes, sir.

Q Would you take a look at the sheet following your financial statement titled "Meyers Parking System Operating Statement, Chatham Center Garage"?

A Right.

Q Your revenues for 1968, 1969 and 1970 as projected are constantly increasing, right?

A Yes.

Q And your rentals, however, are decreasing: 1968, \$582,000.00 so on. The projection for 1970 is five thirty-seven. Can you explain that in view of what you said about your guarantee plus a percentage --

A The real estate taxes should really be a part of rent.

Q Real estate taxes are a part of rent?

A There's an escalation clause in the lease for real estate taxes.

Q You have treated the real estate taxes on that statement separately, haven't you?

P. B. Smith - Cross

(235) 249a

Mr. Buzzard pulled them up, yes.

Now can that be if you have already taken into consideration real estate taxes, how does the real estate affect the other figures I mentioned with respect to your revenue and your rent?

The overage rental is calculated after the tax escalation.

Overage rental is calculated --

After the tax escalation.

The difference in your operating income, Mr. Smith, as shown on that sheet is really accounted for because of your increase in payroll and the increase in your --

Parking tax.

Your taxes, right?

Parking tax.

Real estate taxes, not parking tax.

What was the question again?

The loss shown on your operating income is accounted for by reason of the increase in the real estate taxes and your payroll?

Well, if you will note that the --

MR. MARKS: What year are you talking

about?

MR. BOEHM: I am talking about 1968 and

1969, the actual figures shown on the sheet.

250a (236)

P. B. Smith - Cross

THE WITNESS: I would say it's the parking tax.

MR. MARKS: Your Honor, the figures, I think, speak for themselves. They are in the record.

Y MR. BOEHM:

You don't want to add or explain anything further than what is set forth there with respect to that question for 1968 and 1969?

I think it shows right (indicating) here.

Now, you say that you have noticed that cars that were formerly parking at your garage are now parking at other lots farther out from the city?

Less expensive facilities, yes.

Do you mean to tell me that you recognize as the superintendent of that entire, -- what is it, a five-level garage?

Six.

You have six stories, six floors which you park cars on and as the superintendent you personally observed that some of the cars that you formerly parked are now parking in other lots?

I recognized some of the cars of people that had been there from the very beginning. I was there when the garage opened and knew and met some of these people personally.

Where did you see their cars parked after you raised the rate?

P. B. Smith - Cross

(237) 251a

I've seen them in the Arena lots and the lot behind the church.

How many cars are we talking about that you personally observed?

Oh, I'd say 25 that I recognized.

Twenty-five?

There are many more than that.

How many cars do you park per day right now at Chatham Center, average?

We're averaging about 2200 cars.

Now, your early bird rate, which I am 100 per cent in favor of, I have been taking advantage of it, I used to be a dollar-seventy-five man, now I am a dollar-and-a-quarter man, doesn't say, however, on the sign that you have posted there at the cashier's window how long it is going to be in effect. Have you committed yourself in any way to your customers on how long that early bird rate will be in effect?

No.

So if you wanted to, you could after this case were finished eliminate that rate?

I suppose, but I would not anticipate doing so.

And the first day that rate became effective was what?

I believe it was the 4th of September.

Sir, you mentioned that when you raised your prices you

252a (238)

P. B. Smith - Cross

noticed that some of the cars instead of parking at your garage were parking at other garages, and I think Judge Wessel asked you whether the prices were lower at those other lots.

A Yes.

Q And you said yes that was true?

A Yes.

Q The difficulty I have is in coming, then, to the conclusion that the increase in the parking tax, as you say, was the sole reason for the people not parking at your garage. It seems to me that --

MR. MARKS: I object. If there is a question Mr. Boehm has, I would be glad to let the witness answer, but --

THE COURT: Would you put your question to the witness rather than going into a lengthy discussion as to what you propose to ask?

MR. BOEHM: I am sorry, Judge, if I was doing that.

BY MR. BOEHM:

Q The question is this: How is it that you come to the conclusion that the sole reason for people leaving your garage and parking elsewhere is the increase in the city's

parking tax when you have admitted to Judge Wessel that the cars that left you after the increase in the parking tax went to lots that charged a lesser rate than you were charging?

MR. MARKS: I object. That is not what the witness said. He said when he raised the rates to try to pass it on they lost customers. He didn't say it was the parking tax that caused the loss in customers, he said it was the raise in rates. He said the parking tax affected their net income.

MR. BOEHM: I guess the record will speak for itself. Let us ask the gentleman what he said before.

MR. BOEHM:

Did you say --

MR. MARKS: I object to that. You have the record here.

MR. BOEHM: If Judge Wessel wants to, we will have the reporter go back to his testimony.

THE COURT: Rather than waste a lot of time going through this, answer the question put, if you can.

254a (240)

P. B. Smith - Cross

We will overrule your objection and
note the exception.

(EXCEPTION NOTED)

THE WITNESS: The increase in rates
seemed to force customers elsewhere, to go
elsewhere.

BY MR. DOEHM:

Q What do you mean when you say it seemed to force them else-
where?

A Well, prior to rate increases I was turning cars away doing
over 3,000 cars a day, turning cars away by nine-thirty,
ten o'clock in the morning. After the rate increases we
no longer turned cars away and are now doing approximately
2200 cars a day.

Q Can you say that the sole reason for automobiles leaving your
garage and parking elsewhere after a rate increase, and that
is the rate increase as you say after the parking tax
increase, is that parking tax?

A It is the increase in my rates caused by the parking tax.

Q It is the increase in your rates.

Just because the parking tax increases doesn't
necessarily mean that you have to raise your rates?

A That is correct. I did not feel that I was able to raise my
rates this past February.

As a matter of fact, I think you were in the courtroom this morning when Mr. Stabile testified with respect to a number of his lots on which he didn't raise his rates after the parking lot tax was put into effect, and you heard what the results of his operation were. It is possible, I suppose you have noticed also with respect to your operation, that you can actually realize a greater net return by parking more cars at a lesser rate than you can at parking less cars at a higher rate?

MR. MARKS: I object to that because the testimony has been exactly the reverse. He has testified that they have been able to park fewer cars and that the net operating income has gone down. Mr. Boehm has just said the reverse and says, "Isn't that true," and I don't think that is fair.

MR. BOEHM: No, I am not. I didn't say that.

MR. MARKS: I withdraw the objection.

THE COURT: If the witness can answer, he may.

THE WITNESS: Would you ask it again, please?

256a (242)

P. E. Smith - Cross

BY MR. BOLLEN:

Q Another way of putting the question would be that it is possible for you, and you have noticed this in the past, that you can actually realize a greater return with a lesser rate thereby attracting more cars than you would with a higher rate discouraging people from parking there and parking elsewhere?

A I would not necessarily say that we would have a greater return.

Q What you want to do in your operation is maximize the use of those six floors which you have available?

A That is correct.

Q And you want to do that at a price at which you are able to make a decent return?

A Hopefully.

Q Is it possible for you to do that, to make a greater return with a lesser rate?

A Not necessarily.

Q Not necessarily. I agree with you there.

Are you saying, sir, that you attribute the decrease in your operating income as shown on that statement solely to the increase in the parking tax?

MR. MARKS: For what years? You are talking about the 1969-'70 year or 1968-1969?

P. B. Smith - Cross

(243) 257a

MR. BOEHM: 1968-1969.

THE WITNESS: Primarily so.

MR. BOEHM:

Not solely?

No.

You recognized the fact that your other costs have increased substantially, also?

We had some labor increases, but the biggest single one I believe you'd find is the parking tax.

You had repairs of \$1,000.00, you had something under the category of "Other" as \$5,000.00.

Repairs and maintenance, \$20,000.00.

MR. MARKS: The figures are there, if we could save some time.

MR. BOEHM:

You have \$49,000.00 under the heading of "Real Estate Taxes."

Well, you will note that the rent in '69 over '70 is a lesser figure if you combine the two, the rent and the real estate taxes. The increase in rent and real estate taxes together is not the same or is not as much as the increase in the parking tax.

What you are saying is the rents went up \$27,000.00, approximately?

Whatever it amounts to. Yes, that looks about right. Right.

258a (244)

P. B. Smith - Redirect

Q Isn't that what your loss in operating income was comparing 1968 and 1969?

A 29,000?

Q Yes.

A But I think you have a parking tax in there, too.

MR. BOEHM: That is all. Thank you,
Mr. Smith.

MR. MARKS: I just have one or two
questions, Your Honor.

- - -

REDIRECT EXAMINATION

BY MR. MARKS:

Q Let us look at 1969 and the projection for 1970. The item attributable to real estate remains constant, is that correct?

A Yes.

Q If you take all the other expenses except for the parking tax, you find that the total expenses decrease slightly?

A Yes.

Q Say \$10,000.00?

A We have tried to make it a bit more efficient trying to cut payroll and other things.

Q Despite the fact that expenses go down and revenues go up, the only significant change is in that parking tax, isn't that right?

That's correct.

And that is --

And the operating loss.

That is another \$72,000.00 that is added on in your expenses in 1970 that wasn't there in 1969, is that correct?

That's right.

And there has been no change at all in that real estate tax figure?

Right.

MR. MARKS: I have nothing further,

Your Honor.

THE COURT: Is there any further cross-examination, Counsel?

MR. BOEHM: I may have one more question, Judge, if I can have the Court's permission.

THE COURT: All right.

RECROSS-EXAMINATION

MR. BOEHM:

Take a look at your revenues for 1969 and your projection for 1970.

That shows an increase in revenue?

Correct.

Would you say that your expenses would increase proportionately

260a (246) S. P. Gline - Direct

to the increase in revenues?

A Not necessarily. As I stated just a second ago, we have tried to minimize, streamline our expenses as much as possible.

MR. BOEHM: That is all I have. Thank you.

MR. MARKS: I have nothing further.

MR. BOEHM: Oh, excuse me.

BY MR. BOEHM:

Q You have paid the -- you are paid current, aren't you, the City Treasurer for your parking taxes?

A I believe so, under protest.

MR. BOEHM: That is all.

MR. MARKS: I call Seymour Gline, Your Honor.

SEYMOUR P. GLINE, called as a witness

behalf of the Plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MARKS:

Q Will you state your address and occupation?

A I live at 370 East Seventy-Sixth Street, New York City, and I am Vice-President of Meyers Parking Systems.

Q What are your responsibilities at Meyers?

S. P. Gline - Direct

(247) 261a

I'm in charge of operations throughout the entire chain.

How many locations or facilities are there within the chain?
A little over 200.

Are you in charge of all the regional managers?

Yes. We have nine regional managers that report to me.

Can you tell us what your experience is in the parking industry?

I have been in the parking industry for approximately 25 years.

Will you give us some of your background?

I operated a chain of 20 odd garages that I owned independently, and for six years I was executive director of the Metropolitan Garage Board of Trade which is the parent organization for garages in New York City.

Have you also held positions with the New York Garage Owners Association?

I was President of that for six years.

Have you also had experience in city-wide labor negotiations in New York with regard to the parking industry?

Yes. I've been chairman of the Labor Committee for 12 years in New York City.

Can you tell us the scope of Meyers' operations in the sense of how many employees you are responsible for in the supervision chain?

262a (248)

S. P. Gline - Direct

A Close to 2,000.

Q Can you tell us where Meyers' locations are spread?

A It spreads from Hawaii all the way across the United States and into Puerto Rico.

Q Can you identify a few major facilities you are familiar with?

A We operate the Century Plaza Complex in Los Angeles, it consists of about 7500 parking stalls; the Lafayette Plaza Garage in Bridgeport, Connecticut, 2100 stalls; stadium garages in St. Louis with a combined total of 2200 stalls.

Q Is that a redevelopment operation?

A Yes.

Q Has Meyers often participated in redevelopment projects?

A Yes.

Q Does Meyers also operate garages in the Pan Am Building and Seagrams Building and Madison Square Garden in New York?

A Yes, and the No. 1 and No. 2 Plaza; these are two landmarks in New York City.

Q When did negotiations with Meyers in regard to leasing the Chatham Center garage take place?

A 1959 and '60.

Q Did the commitment to lease that go into operation before there was a ten per cent parking tax in effect?

A Yes.

Q Can you explain based on your experience in this industry

S. P. Gline - Direct

(249) 263a

How projects like Chatham Center are financed? How do people go about building these redevelopment centers?

We are called upon by developers, and a feasibility study is made as to the nature and type of garage that might be required by the particular development. A study is made as to costs, and then we offer a guaranteed rent to the developer over a period of between ten and twenty years plus a percentage at certain fixed overages.

What does the developer do then that he has a guaranteed income coming in under a Meyers lease?

Meyers being a national company and being rated triple A, the lease becomes an instrument for him to procure a loan in developing the project.

Is it possible for him to obtain major financing without a guaranteed income for underlining leases like the one Meyers has?

Absolutely not.

What commitments are there in the Chatham Center that enabled the financing to be developed so it could be built?

We originally negotiated close to \$10,000,000.00 in guaranteed rents.

That is for Meyers?

From Meyers.

In addition to that was there also an arrangement worked out

264a (250)

J. P. Gline - Direct

Between the Chatham Center operation and Howard Johnson's?

- A In addition to that Howard Johnson's also guaranteed a certain amount of money on a franchised basis to the developer.
- Q On the basis of those two guarantees was the developer able to go out and get the financing so the Chatham Center redevelopment could be set up in Pittsburgh?
- A That was the cornerstone for the entire redevelopment.
- Q In your opinion based on your experience in this industry, could Chatham Center or developments like it be built today in Pittsburgh with a 20 per cent parking tax?
- A Absolutely not.

MR. BOEHM: I object to the question,
Your Honor.

MR. MARKS: I will lay the underlying
basis for the opinion, Your Honor; but I think
it is crucial in this case.

THE COURT: Very well.

(EXCEPTION NOTED)

BY MR. MARKS:

- Q Can you give us the factors that go into that conclusion that you have drawn based on your opinion as an expert in this field?
- A Well, number one, it's plain for anybody to see that there

is no other national chain in the United States that's in the city of Pittsburgh. Ever since this tax has come into being all major chains have steered away from Pittsburgh as if it was a desert.

MR. BOEHM: The reason for my objection, Your Honor, is really whether Chatham Center could be built today with the 20 per cent parking tax is not an issue in this case. The issue is considering the fact Chatham Center exists, considering the fact all these other parking lots exist, can they survive with the 20 per cent parking tax. We are in a real speculative area saying whether they can be built today.

THE COURT: We understand that. We want to get the surrounding circumstances to what actually leads up to the issue here. We are concerned about the parking industry and their respective projects, whether or not they can stay in business and operate at a profit with this parking industry tax. We are aware of what is involved.

Proceed.

BY MR. MARKS:

Q Would Meyers Brothers today consider building an operation like Chatham Center or any other parking facility operation that could provide the basis of financing for a redevelopment project with the 20 per cent tax in effect?

A We could never consider it at all.

Q Would your answer be the same with regard to a 15 per cent tax?

A Absolutely not.

Q Has in fact Meyers been approached by people in Pittsburgh to expand their operations here and to provide the basic underlying financing for two new projects?

A Yes. I was involved with the Shadyside Hospital and the American Oil Company development in Shadyside, and when we clamped the 20 per cent parking tax into our figures there was no possible way it was going ahead and we dropped out of the entire --

MR. BOEHM: I object for the same reason, Your Honor. It is irrelevant, incompetent and immaterial.

THE COURT: We will sustain your objection.

(EXCEPTION NOTED)

MR. MARKS: The reason that these

S. P. Gline - Direct

(253) 267a

operators can't participate in these buildings is because with a 20 per cent tax there is nothing left for profit, that is a confiscator situation and that is why, as Mr. Stabile has previously testified without any objection, that he didn't go into that hospital situation and now Meyers was also approached and they couldn't go into that hospital situation because the 20 per cent tax is so confiscatory that they couldn't put their name on a \$10,000,000.00 guarantee to provide the base for financing.

THE COURT: We get the message, Counselor; but we still sustain the objection.

MR. MARKS:

Now, did Meyers also make the decision not to enter Pittsburgh on an Amoco, American Oil Company, project? For the very same reason.

MR. BOEHM: I object for the same reason, Your Honor.

MR. MARKS: May I ask one question further on this line, then I will drop it, Your Honor.

MR. MARKS:

268a (254)

S. P. Gline - Direct

Q Was there any other factor in these negotiations, in both negotiations, aside from the parking tax that led to Meyers not going in?

A None whatsoever.

Q And if the parking tax were not in existence, 20 per cent, would Meyers today have tried to finance both of those developments?

A Definitely.

Q Based on your experience as a national operator with the number of operations that Meyers has, which is over 200, is it financially feasible for a major operator to do business where there is a 20 per cent tax and realize a profit?

A Absolutely not.

MR. BOEHM: I object, Your Honor. The records are here, we know what the profits are, we know what the losses are. We don't need an opinion from the witness. He has to back up his opinion and he will do that by showing statements already in evidence.

BY MR. MARKS:

Q Based on your experience, are you aware of any major parking operator whose financial statements would reveal that they can make in excess of 20 per cent or more of the gross

in the United States?

MR. BOEHM: I object, Your Honor. His awareness of what other operators might be doing is not relevant here unless -- he can't reply in the negative, anyhow. If he can reply in the affirmative and give us some information it would still be hearsay.

MR. MARKS: It is common sense that if no operator in the country makes 20 per cent and you tax him 20 per cent he makes nothing.

THE COURT: You have proven your case without your witness.

MR. MARKS:

May I have a "Yes" or "No" answer?

No, I am not aware of any major parking operation that has 20 per cent.

Prior to Meyers entering into a situation where it might participate in the long-term lease, what are the factors that it analyzes in determining whether to make a business decision to go ahead?

Well, a feasibility study is made and a cost project is made, competition is studied, traffic patterns are studied, all these items are cranked into a situation and we see what we can guarantee the man who is running the project and what we

270a (256)

S. P. Gline - Cross

can live with.

Q Does Meyers prior to entering one of these projects envision a certain minimum rate calculated on the basis of a percentage of gross revenues that it expects to be able to return from this operation before it will consider going in?

A Yes.

Q Will you tell us what that minimum rate figure or span is?

A Depending on the size of the investment and depending on the length of the lease, I would say it requires between ten and fourteen per cent.

Q Is that a minimum?

A That's a minimum.

Q And is that prior to the payment of taxes on that?

A Definitely.

MR. MARKS: I have nothing further.

CROSS-EXAMINATION

BY MR. BOEHM:

Q Mr. Gline, the last answer which you gave with respect to the ten to fourteen per cent return, you conditioned that on the size of the investment, is that right?

A The size of the investment and the length of the investment.

Q And you really can't calculate the percentage of return that you expect to receive from a particular operation unless you

those two factors?

MR. BOEHM: I have nothing further.

Thank you.

- - -

REDIRECT EXAMINATION

MR. MARKS:

Talking about investment in that last question Mr. Boehm asked you, you are talking about the investment to include not only a building but a long-term lease where you are responsible for eight to ten million dollars?

Yes. When our company signs a lease we are committed for that amount of money from the very day the lease is signed, be it two million, four, eight million, ten million. That's our investment, we're committed to it.

MR. MARKS: Thank you. I have nothing further.

THE COURT: You may step down.

MR. BOEHM: I have two more questions, Your Honor, of Mr. Smith, if I may, before he leaves.

THE COURT: Come back, Mr. Smith.

- - -

272a (258)

P. B. Smith - Recross

PETER B. SMITH, being previously duly sworn, was recalled and testified further as follows:

RECROSS-EXAMINATION

BY MR. BOLHM:

Q I am not going to keep you long, Mr. Smith.

A That's fine.

Q I am not sure whether the record shows whether those projections that are on your sheet you were referring to for 1970 were your projections or Mr. Buzzard's.

A Mr. Buzzard's.

Q They were Mr. Buzzard's?

A Yes.

Q So, so far as you know they were arrived at in the same way as the other projections were made?

A As far as I know.

Q And the other question I had for you was in connection with your early bird rate, what have you done to publicize the fact that you have this lower early bird rate which went into effect recently?

A We advertised on four radio stations and our advertising is in the Duquesne and Robert Morris papers.

Q Radio stations and the Duquesne University and Robert Morris

A Newspapers and bulletin boards. a

P. B. Smith - Recross

(259) 273a

Can't have Exhibit 1 in front of you now, do you?

No, I don't.

What are your interest costs reflected on that statement?

Interest costs -- I believe they are in the "Other" --

Under the heading of "Other"?

Yes.

MR. BOEHM: That is all. Thank you.

MR. MARKS: I have nothing further,
Your Honor.

(Plaintiffs' Exhibit No. 11 was marked
for the purpose of identification.)

MR. BOREMAN: Your Honor, at this time
I want to offer in evidence Plaintiffs'
Exhibit 11 which is the parking study made
of the Pittsburgh Central Business District
made for the Parking Authority of Pittsburgh
by Wilbur Smith and Associates.

MR. BOEHM: I have read it, Your Honor,
and I am very happy to admit it into evidence.

THE COURT: Very well, we will admit it.

(Plaintiffs' Exhibit No. 11 was received
in evidence.)

MR. BOREMAN: Your Honor, I have, I
believe, one more witness.

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274a (260)

D. M. McNeil - Direct

DONALD M. MCNEIL, called as a witness
on behalf of the Plaintiffs, having been first
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BOREMAN:

Q State your name and address, please.

A Donald M. McNeil, No. 5 Colonial Place, Pittsburgh 32,
Pennsylvania.

Q What is your occupation?

A I'm a consulting engineer specializing in traffic,
transportation and parking problems.

Q State your educational and business background with respect
to these fields.

MR. BOEHM: Your Honor, could I have an
offer as to what the Plaintiffs intend to prove
through the testimony of this witness?

MR. BOREMAN: Your Honor, Mr. McNeil
is possibly the leading and foremost expert
on parking and traffic in the City of
Pittsburgh. He was formerly traffic engineer
for the City of Pittsburgh.

MR. BOEHM: I admit he is qualified.

MR. BOREMAN: I think this case is
eminently suited for expert testimony on the

questions of parking and its qualities, characteristics, its relationship to traffic congestion, its relationship to the function of the Parking Authority. All the issues in this case this man is emanately qualified to tell us about. I think if there was ever a case suited for an expert witness in this field of parking, I think this is it.

MR. BOEHM: I disagree 100 per cent, Your Honor. I think that testimony on traffic congestion can have no bearing on the issues in this case at all. There is no legal requirement that we prove that we have expenses insofar as police protection or that we have to show a valid reason for enacting a general revenue tax like a parking tax. I don't see how it can help the issues in this case.

MR. DOREMAN: Your Honor, this is the very heart of the case. Counsel evidently misunderstands the point of this case completely. The heart of our case is that this ordinance violates uniformity because it has no reason for the basis for the violation

made. This is the very issue in this case: Is there a reasonable basis for picking out the parking industry from all other business? When he says that the city doesn't have to give any reason, I don't think it could be further from the facts. The Courts have said while they will not review the judgment of the legislature they will determine whether there is a reasonable basis for the ordinance or whether it is arbitrary. This is what an expert's testimony can give.

MR. BOEHM: The Courts can't determine whether there is a reasonable basis for the ordinance, but the Courts can and must determine whether there is a violation of the uniformity clause of the Constitution.

THE COURT: Your objection is overruled. Proceed. We think this is germane to the subject.

(EXCEPTION NOTED)

BY MR. BOREMAN:

Q State your education, experience and background in this field parking and traffic?

A I graduated from the University of Pittsburgh with a degree

D. M. McNeil - Direct

(263) 277a

of Bachelor of Science in civil engineering after which time

I --

What year?

In June of 1926 at which time I was immediately employed by the City of Pittsburgh as an assistant traffic engineer.

I continued in such position until about 1932 at which time I was promoted to the position of traffic engineer and served in said capacity until I resigned on February 1, 1952.

After that date I immediately became engaged in consulting work and have done numerous traffic engineering, parking and other studies for many, many municipalities, many private organizations within the tri-state area of Pittsburgh and in the general area of Pennsylvania as far east as Harrisburg and into Ohio and West Virginia.

Will you state for what communities you have made parking surveys and parking studies?

I have a list here. I'll read them off. It happens to have better than sixty some communities.

MR. BOREMAN: To save time, Your Honor, Mr. McNeil has a brochure prepared. I will offer it in evidence.

(Plaintiffs' Exhibit No. 12 was marked for the purpose of identification.)

MR. BOREMAN: I offer in evidence

278a (264)

D. M. McNeil - Direct

Plaintiffs' Exhibit 12 being a statement of background and qualifications of the witness, Don McNeil.

MR. BOEHM: I have no objection, Your Honor.

THE COURT: We will admit it.

(Plaintiffs' Exhibit No. 12 was received in evidence.)

BY MR. BOREMAN:

- Q From this resume, Mr. McNeil, it appears you have been advisor and consultant not only for this municipality but for many private corporations in their feasibility studies as to engaging parking facilities, is that right?
- A Yes, sir.
- Q I believe also that you were the technical advisor who prepared the first report in 1945 which led to the creation of the Pittsburgh Parking Authority.
- A Yes. I'm somewhat credited as one of the daddies of the Pittsburgh Parking Authority.
- Q You have a copy of that report?
- A I do.
- Q Will you tell us for whom you made the report?
- A This report was made by the Pittsburgh Regional Planning Association by the Allegheny Conference on Community Development.

D. M. McNeil - Direct

(265) 279a

and the report is dated 1945 and 1946.

What was the purpose of the report?

The purpose of the report was to show the critical shortage of parking in the city and the need for something to provide the needed parking spaces for the welfare of their community.

At that time how many parking spaces were required by the downtown area or the city itself?

At that time we had approximately 135 parking facilities in the area, and these facilities were providing approximately 13,000 parking spaces; and after extensive study as indicated by that report, the report concluded and showed that Pittsburgh would need 26,000 spaces.

But the significant thing of the report was that it showed two things: Of those 26,000 spaces, approximately half were needed for what we term short-time or business-producing traffic, and the other half were what we deemed as long-time or employee-type parking.

You are familiar with Plaintiffs' Exhibit 11, are you not, the survey made for the Pittsburgh Parking Authority?

Yes, I am.

Bringing it up to date to the year 1969?

Yes.

You have read that survey?

Yes, sir.

280a (266) D. M. McNeil - Direct

Q And based on that survey and your other studies in this field, are there still parking spaces required in the downtown area of Pittsburgh?

A Yes, sir.

Q What is the shortage?

A The second paragraph of this report reads: "There is a present deficiency of about 4100 spaces in the survey area."

Q That is downtown Pittsburgh?

A That's in the central business district which will increase to approximately 7500 spaces based on developments that are currently underway, and based on other proposed projects the deficiency is anticipated to further increase to about 10,500 by 1979. Those figures substantially are the studies of 1945 and 1946.

Q Can you give us the figure, the total number of parking spaces in downtown Pittsburgh or what is called the central business district of Pittsburgh? I believe that study --

A There's approximately 23,500 spaces in Pittsburgh today on off street. And there's another 756 spaces on street making a total of about 24,300 spaces.

Q How many spaces does the Parking Authority serve?

A Slightly over 6100.

Q Which leaves about how many for private operators?

A Well, private operators represent three-fourths of the total

D. E. McNeil - Direct

(267) 281a

of Pittsburgh of those that are there now.

The present existing spaces --

are three-fourths, 75 per cent.

Would that be about 18,000 or more?

Well, it would be 18,200, roughly.

What is the number of spaces represented by the present Plaintiffs in this suit?

The present Plaintiffs in this suit, approximately 17,000.

And, of course, that includes some spaces outside the central business district?

Yes, sir, a few.

So out of a total of 24,000 spaces in the City of Pittsburgh, 17,000 are represented by the Plaintiffs in this case?

17,471, actually.

Mr. McNeil, in the course of your work as a consultant in the parking industry and as the consultant and advisor and technical planner for the Parking Authority, have you had occasion to study the subject of traffic congestion and its causes of the City of Pittsburgh?

I live here, I travel through Pittsburgh almost daily, my love is here in Pittsburgh, that was my first job, naturally I'm deeply concerned with Pittsburgh and its traffic --

have you made studies with respect to the subject of traffic congestion and its causes?

282a (268)

D. M. McNeil - Direct

A Yes.

Q Will you state what your conclusions are and how you arrived at them on the subject of traffic congestion?

A Traffic congestion -- and unfortunately erroneously used many times -- traffic congestion is whenever the street system is either not used properly or has inadequate physical conditions to permit the traffic to move thereon. For example, let us say as we approach an intersection and we have a large right or left turn movement of traffic conflicting with pedestrian traffic and it can't readily move until pedestrian traffic passes out of the way, you obstruct one or two lanes of traffic, depending on whether they are right turns or left turns. For example, over at the William Penn Hotel you have numerous vehicles coming to discharge people, you have airport limousines stopping to pick up commuters. It is a rare occasion that you can ever get the full use of the curb lane of Grant Street because of the obstruction of the need for the life of the hotel. I'm not saying it shouldn't exist, the hotel needs it to exist, for a matter of fact.

Go over and watch at Seventh Avenue at the Bell Telephone Building and watch the large number of men waiting to pick up their girl friends or husbands waiting to go pick up their wives. It's common you almost need an officer to keep that

D. M. McNeil - Direct

(269) 283a

lane clear.

Take bus stops, take the loading and unloading of transit vehicles. You constantly are obstructing one lane for the movement of traffic. Those are the things that create our congestion in our business district. Now, with relation to parking garages, how are traffic congestion and parking garages related?

It's ridiculous in my opinion to label congestion as a factor on parking garages. Sure there may be an occasion, but they are not the principal factors of congestion. The others that I have cited are many, many times greater.

Does a parking garage such as, let us say, Stanwix Auto Park or the parking garage at I. B. M. or Gateway Towers or any of those, are they the cause of traffic congestion?

When you say traffic congestion, you mean on the street?

On the streets, I am talking about.

Rarely. I sat and heard them questioning Mr. Stabile this morning or Mr. Shepard this morning about the congestion down on Stanwix Street, --

MR. BOEHM: Don't get mad at me.

THE WITNESS: -- the officers being needed there. That officer is needed to keep the people from stopping at Horne's. Go down there and watch it. It's not the garage, it's the people stopping

284a (270)

D. M. McNeil - Direct

at Horne's. That officer is constantly over there saying, "Come on, get out of here and let us have the curb lane so we can move."

BY MR. BORLMAN:

Q Do you know of any situations where extra police are stationed at parking garages to service any traffic?

A No, that is not their specific assignment. They may have to go there if somebody insists on trying to get in when there is a "Full" sign up. He may have to go down there and order the car away.

MR. BOEHM: I object to the last question and answer, Your Honor. This witness, although he is qualified, is not qualified to testify on what the assignment of a particular police officer is.

BY MR. BOREMAN:

Q Mr. McNeil, what other businesses in Pittsburgh besides, let us say, the Hilton Hotel draw traffic congestion?

A Why, department stores. You have numerous cars coming into town to bring people to department stores, you have office buildings, numerous cars coming to office buildings, the hotels I've already commented about, you've got people coming to the banks, you've got people coming to attorneys for advice, you've got people coming to the City-County Building and the Courthouse.

D. M. McNeil - Direct

(271) 285a

THE COURT: I am sure that would render a lot of congestion.

THE WITNESS: That's right.

MR. BOREMAN: And confusion.

THE WITNESS: It's these buildings that attract these automobiles. The parking garages aren't the generators of this parking, it's the buildings, the life of the community that's the generator for these vehicles and this congestion.

MR. BOREMAN:

I suppose the restaurants and theaters, also.

Oh, certainly.

Mr. McNeil, is it the parking garages that attract all these cars into town?

No.

It has been said that the cars come into town because there are parking garages, not the other way around, parking garages are there because the cars come into town. Which is it?

Thank God the parking garages are there or many of the people wouldn't come into town.

Is it a fair statement to say that cars come into town because the parking garages are there?

286a (272)

D. M. McNeil - Direct

A Those cars come into town primarily to do business and transact trade and make up the life of this city.

Q And if they weren't there, the parking garages, what would be the situation as far as traffic congestion is concerned in downtown Pittsburgh?

A Well, if the people insisted on coming in, Lord help us, you wouldn't be able to move any traffic on the streets, you'd have the most horrible congestion you have ever seen.

Q What do the parking garages do with respect to congestion?

A They alleviate congestion, in my opinion. They take the traffic off the street.

Q It is fair to say the function of the parking garages is to relieve congestion, is that true?

A When I went down to the lecture to appeal the Parking Authority, that was our principal reason for the Parking Authority.

Let me read my report. Page 4 of my report which was the granddaddy of the Parking Authority -- and I was labeled a socialist and communist because I went down there and fought for the Parking Authority. It's necessary. It must be there.

Here is what we said, and I'm not talking against parking authorities, we need more. Quoting on Page 4:

"In order to avert disastrous traffic congestion under the

D. M. McNeil - Direct

(273) 287a

impact of the greatly increased traffic volumes anticipated, the traffic capacity and efficiency of the triangle must be increased by every available means, the most essential of which is the provision of adequate off-street terminal storage facilities."

That's as true today as it was then.

In the Parking Authority Act there is a provision that says that there is a parking crisis, speaking of the time the Act was passed in 1947.

Was there a parking crisis in Pittsburgh?

Certainly.

The report said one of the ways of alleviating that was the joint effort of the Parking Authority and private operators.

Was that your recommendation?

Yes, sir.

Can the function of parking in Pittsburgh and its necessary functions be performed by the Parking Authority alone or is there the need for private operators?

I can't think the Parking Authority financially can solve this problem. I think the city has greater worries the day that we bankrupt our private operators.

I believe you have stated you were consultant to other municipalities. Have you made other recommendations to other municipalities with respect to the erection of parking

garages to relieve congestion?

A Since leaving the City of Pittsburgh in '52, February, I have made better than -- I have made feasibility reports for many, many communities. Better than several hundred million dollars has been expended on parking programs.

Q What have been your recommendations in many of these cases?

A That money has been spent and those facilities have been developed and those communities are happy.

Q Mr. McNeil, in the course of your studies have you made a study or do you know the number of traffic policemen that are necessary to police downtown Pittsburgh?

A Yes, I have. This was of constant concern to me when I was in the services of the city, and I was interested in the subject.

Q Now, in 1962 how many traffic policemen were there?

A The complement of the Bureau of Police in 1962 was 1268, total, of which 228 were in the Traffic Division and there were 25 supervisory personnel.

Q There were 228 in the Traffic Division?

A Yes.

Q In 1970 what are the figures?

A In 1970 there is a complement in the Bureau of Police, according to the budget, and I don't know that all the vacancies are filled, of 1500 of which 116, about half.

D. M. McNeil - Direct

(275) 289a

are in the Traffic Division, and of those in the Traffic Division 14 are supervisory.

So presumably 102 are traffic policemen?

No, it would be 116 plus 14, 130 total in the Traffic Division.

Now, the Traffic Division is made up of -- at least was when I was here, was made up of motorcycle patrol as well as the corner man, and primarily the corner man being in the downtown area.

Are you saying that in 1970 there are 116 corner men?

No, I said there's 116 men in the Traffic Division made up of the motorcycle patrol and corner men.

In 1962 what was the figure?

228.

MR. BOEHM: Are you talking about total city-wide?

THE WITNESS: Yes, sir.

MR. BOREMAN:

Mr. McNeil, as an expert in this field can you give us a little insight or discussion as to what the differences are, if any, between the operation and function of the Public Parking Authority garages and the private operators' garages? Is there any difference?

Generally I would say there is none with reference to the

operation.

They perform the same function, do they not?

Yes, sir.

And they have employees in the same union?

Yes, sir.

And their costs are generally the same, right?

Yes, sir.

So that is it your opinion that what the parking garage or the private operators do in function and in operation is exactly the same as the Parking Authority?

Basically, yes. I'd say it's the same.

Do you know of any difference outside of the method of financing a new building?

Except for one item, and I think the public garages endeavor to cater more to the short-time parker than the long-time parker. But as far as a car coming in, giving him his ticket, collecting his money, taking care of his car, that's all the same.

Are they really doing that or is the situation pretty much the same?

MR. BOEHM: I object to that question. He is leading his expert now. In fact, he is arguing with him a little bit.

E. BUCHANAN:

Do they actually accomplish what they are endeavoring to do, or do they do the same?

The Parking Authority has eight garages. Possibly in one or two they are achieving that objective, but in general they are doing the same.

It has been said that if there were no parking garages in Pittsburgh automobiles wouldn't come to town and then we would have people compelled to patronize mass transit and everything would be taken care of by mass transit.

What do you think of that?

I recalled the days when we had garage strikes, and I recalled the days when we had transit strikes, and I can tell you either one are very unpleasant. If you don't have garages -- I don't think we can accommodate it with the present transit facilities that we have. Further, our transit facilities do not spread into the suburbs sufficiently to accommodate the need of the people to come into downtown Pittsburgh.

Let us assume there was a very fine mass transit system comparable to some of the cities that have accomplished this. Would there still be the need for parking in downtown Pittsburgh and would the need be one that private operators are required to fulfill along with the Parking Authority?

A I think so.

Q Have you made any study with respect to whether or not this parking tax can be passed on by raising the rates? If so, what are the results of your study?

A There is a point of no return. I think today the cost for short-time parkers for business-producing traffic is such that we are discouraging the shopper from coming to downtown Pittsburgh. And every time you add more tax you drive that much shopping business away.

Q Can you tell us how you know that?

A Pardon?

Q Can you tell us how you come to that conclusion?

A I happen to work for many big developments such as South Hill Village, I laid out the traffic and I laid out the parking, such as Monroeville Mall, I laid out the traffic and parking. I have done work in many places all with the objective of weeding traffic and business to those areas. There is only so much retail trade and so much business in a community and so much money in your pocket. You are going to spend so much for goods and so much for food, and as you do that they are going to those areas that provide the greatest convenience. And the greatest convenience today is in many places in these suburban shopping centers. It certainly costs nothing to park in those areas.

D. M. McNeil - Direct

(279) 293a

Mr. McNeil, you were retained by the Plaintiffs to make this (indicating) Plaintiffs' Exhibit 1 containing the financial figures of the Plaintiffs involved here?

Yes, sir.

And Mr. Buzzard is employed by you as the statistician, and he did the detailed work with respect to its preparation?

Yes.

Did you participate in its preparation?

Yes.

In what way?

Almost daily Mr. Buzzard would talk to me when it came to arranging the forms for simplicity so they could be readily understood by whoever wanted to read them. I had my hands in that, as we had problems with some figure we would discuss it. It was just in a general supervisory capacity that I worked with Mr. Buzzard.

What was the purpose of preparing this exhibit?

In order to find out the effect of the parking tax on the parking industry.

Were you given any preconceived directions to find one type of situation or another type?

I was not.

Were you given any specific instructions as to what you should find?

294a (280)

D. M. McNeil - Direct

A I wouldn't have taken the job if I had been.

Q Were all the records made available to you?

A Any record I ever asked for was given to me.

Q Mr. Buzzard, I think, testified he has been with you for several years. What other statistical studies have you asked him to make in other matters?

A I think I'm very fortunate to have Mr. Buzzard, a man with the capacity that he has. Immediately after he retired from the Port Authority because of age -- and I've known Mr. Buzzard throughout many of my business years, and I immediately offered him a proposition with me, and after a short vacation he came with me.

Let me give you some of the projects I've had him on as a statistician as putting together factual data for me so we could analyze and prepare the necessary reports. He did Gillman's Service in the assembling of the data for the great high school study, the distributing of the school districts racially so that we had equal distribution between the various races, by the assigning of them to transit vehicles and busses transporting them to the respective four high schools that we were studying, the great high schools.

I was engaged to make a complete study of the complete business district of Cumberland, Maryland. Mr. Buzzard

was sent there and assembled the necessary data for me; the same in Charleroi, the same in Canonsburg, at Monroeville Place for the BeeGee Shopping Center. Mr. Buzzard was the statistician. Latrobe Hospital, likewise, Mr. Buzzard assembled the factual data and a recent study on Brookline Boulevard in the City of Pittsburgh for the Public Parking Authority in the City of Pittsburgh.

What was the object of putting the exhibit in this form rather than just collecting all the financial statements and serving them up to the Court?

So that it could be easily understood, everybody that wanted to know something about it had the pertinent data so they could study it.

In your opinion is it possible for the private parking operators to raise the rates and pass this tax on?

I do not believe so.

I believe you were retained by Mr. Stabile in connection with the negotiations for the Shadyside Hospital parking.

I was.

What happened there?

It became impossible to present a feasible financial report.

MR. BOEHM: I object, Your Honor. That is irrelevant, incompetent and immaterial.

THE COURT: Sustained.

(EXCEPTION NOTED)

BY MR. BOREMAN:

Q Mr. McNeil, you have supervised the production of Plaintiff Exhibit 1 and you are familiar with it, you have seen the figures. In the instances where the figures show a decline in the profit picture and in many instances a loss when the tax was increased to 15 per cent and then on the projection in 1970 when the tax was increased to 20 per cent, to what factors do you attribute that decline in profit and the existence of losses?

MR. BOEHM: I think this witness has not been qualified on that basis, Your Honor. We have had the testimony from Mr. Buzzard on this. This is pure repetition from a man who is qualified as a traffic engineer, not as an accountant, really.

MR. BOREMAN: This man has made feasibility studies.

THE COURT: We will permit him to testify.

(EXCEPTION NOTED)

THE WITNESS: In my opinion the parking tax is primarily responsible for the decline in profit in these facilities.

BY MR. BOREMAN:

Q Will you explain that?

D. M. McNeil - Direct

(283) 297a

I may say this in all fairness, I operate through authorities many garages and many parking facilities in McKeesport, in Erie, all of those places. The operation of those facilities are under my jurisdiction. I probably am a greater parking lot operator than any man in this courtroom including Mr. Stabile. Through the many parking facilities we operate, I am consulting engineer.

In your opinion can the private parking operator continue to operate with a parking tax such as the 20 per cent tax now in effect?

I think you are almost at that point or at that point now where you are going to break the camel's back.

What do you mean by that?

They are going out of business. They can't continue to operate.

Why is that?

Because you have reached that point where when you start charging 70 cents an hour for a shopper to come to downtown Pittsburgh he isn't going to come to downtown Pittsburgh when he has other facilities to go to.

Now about the financial feasibility of a parking operator remaining in business with a 20 per cent tax; can he continue to do so with that tax?

I don't think he can.

MR. BOREMAN: You may cross-examine.

- - -

CROSS-EXAMINATION

BY MR. BOREMAN:

Q You say you actually operate parking garages yourself?

A I operate them by setting up their budgets and by advising the operation, such as in the instance of the Public Parking Authority of Pittsburgh. If I was doing this in Pittsburgh I would be advising Mr. Wozniak on subjects of operation.

Q You said you made a comparison of parking facilities under your jurisdiction to parking facilities under the jurisdiction of Mr. Stabile?

A I said I operate many facilities in many communities. Incidentally, there is no parking tax in those communities.

Q You operate many facilities in other communities, right?

A In other communities.

Q Do you operate more facilities than Mr. Stabile operates in Pittsburgh?

A I do it in an advisory capacity for parking facilities throughout the Commonwealth.

Q Are you paid a salary by these people?

A I am paid a salary on a yearly basis.

Q If parking taxes should be imposed by those municipalities

thereby increasing their costs, it might make it uneconomical for them to retain your services?

MR. BOREMAN: I object to it, Your Honor.

MR. BOEHM: All I am driving at, Your Honor, is that the witness may have some bias here.

MR. BOREMAN: Your Honor, I think that is really a snide allegation for a professional man to testify a certain way because it might cost him his job.

THE WITNESS: I couldn't answer anyway, sir, because each community has its own problem.

THE COURT: This is all conjecture and all collateral to what is at issue.

MR. BOEHM: The bias of a witness, I think, is always of interest to the Court.

(EXCEPTION NOTED)

MR. BOEHM:

Mr. McNeil, when was it that you made your study on the number of traffic policemen that the city uses?

I obtained these records from the Department of Public Safety within the last couple months.

And from whom did you obtain those records?

From the Department of Public Safety.

Q I said whom.

A I don't know the individual.

Q You don't know the name of the man you talked to?

A That's right.

Q What particular office was it?

MR. BORMAN: If Your Honor please, I think this is irrelevant. I object to it. These are public figures, they are obtainable as public records. I don't see where it is relevant as to where he obtained the records. If they are wrong, let him bring the records in to show they are wrong figures.

MR. DOEHM: I have no burden to do that. I am trying to find out on cross-examination what the basis of this man's testimony is on direct.

THE COURT: I think he testified as to what the basis of his testimony was on direct examination. He said he made a survey that was a list of the officers that were in the City of Pittsburgh on duty in several places and a breakdown of those figures as to how many were allocated to the corner-police job and how many were motorcycle policemen and he

D. M. McNeil - Cross

(287) 301a

many were on other duties.

MR. BOEHM: Now I am concerned with whether or not he has an accurate list, so I want to ask him from whom he obtained it, when he obtained it. This is perfectly permissible.

THE COURT: If you know, answer the question.

THE COURT: I have copies of the budget in my office, of the city's budget.

(EXCEPTION NOTED)

MR. BOEHM:

Did you get it from the budget or from somebody in the Department of Public Safety?

I got them through my capacity as consulting engineer. Every piece of information I can get, I get ahold of.

MR. BOREMAN: This is a suit against the City of Pittsburgh and we are talking about the number of policemen. This isn't private litigation. Shouldn't the City of Pittsburgh say, "Yes, these are the figures" or "No, these aren't."

What are we talking about, convincing the jury --

MR. BOEHM: I have no burden of proving

302a (288)

D. M. McNeil - Cross

your case.

MR. BOREMAN: You have a burden of refuting the figures if that is so, and the best way to refute them is producing the city's figures.

MR. BOEHM: I certainly am not prevented from cross-examining your witness as to how he obtained his figures. If he obtained them from the budget, fine.

BY MR. BOEHM:

Q If you obtained them from the budget, I know where you got them.

A I got all the budgets in my office.

Q Did you obtain the figures you recited in answer to Mr. Boreman's question from the city budget?

A Yes.

Q And that was the city budget for what year?

A For '62, '65, '68, '69 and 1970.

Q For 1969, what were your figures on the policemen?

A There was a complement in the budget of 1500 police officers.

Q The budget recited that there were 1500 police officers?

A That's right.

Q What did the budget say about those engaged in directing traffic?

It did not say that.

Did you give us a figure on the number of policemen that were engaged in directing traffic?

Yes.

Did you get that from the budget?

No, I got that from the Department of Public Safety.

THE COURT: The witness has answered he got it back --

MR. BOEHM: He changed it to the budget and --

THE WITNESS: There's two figures, the first figure is from the budget.

MR. BOEHM:

Now, I want to know what office you got it from in the Public Safety Department.

From the Department of Public Safety.

You were employed in the Department of Public Safety, right?

That's right.

And you were employed in the Bureau of Traffic Planning, weren't you?

Yes, sir.

You know there are other bureaus in the Department of Public Safety?

Yes, sir.

304a (290) D. M. McNeil - Cross

MR. BOREMAN: I object on the ground it is irrelevant and arguing with the witness.

MR. BOEHM: I am permitted to on cross-examination. That is my function.

MR. BOREMAN: Not arguing.

THE COURT: From what department in the Public Safety Building did you receive the information that you have testified about?

THE WITNESS: I got them from the Department of Public Safety.

BY MR. BOEHM:

Q Sir, you know that there are several bureaus.

A Are you wanting to know the individual's name that gave you the figure?

Q I asked you that before and you said you didn't know.

A In the Traffic Division as you well know they vary from number to number in who gives the figure and so forth and so on. One day he's assigned to East Liberty -- you can get that figure, it can vary around the clock.

Q Let us approach it a different way.

Did you go into the Public Safety Building and go to a particular office and ask for this information, did someone hand you this information on a sheet --

A No.

- of typewritten paper?

Was it typed out for you, how did you obtain it?
I called up and got the information.

You got the information on the telephone?

MR. PARKS: Might I suggest that we shorten this. Just leave a space in the record and the city can submit the figures it derives from the traffic department. This is a public matter and it is not disputed. We have spent about 15 minutes on it.

THE COURT: The longer you want to drag this out, it is up to you.

MR. BOEHM: We have an important matter at hand here. This is one of the ways of my determining and your determining the validity of the information given by this expert witness. I want to find out what the sources of his information are. If we can't find that out --

THE COURT: We are satisfied with the information that we have received. Now, true, you have every right to a cross-examination and it is your duty. We would think less of you if you didn't move in on him to protect your client

MR. BOEHM: I want to find out where --

THE COURT: But we just don't want you to abuse that privilege. We think you have explored this phase of your cross-examination sufficiently that the Court understands the situation, and we would suggest that you adopt another tactic if you have further cross-examination.

MR. BOEHM: Is the Court really ordering me now and refusing me further cross-examination on this witness with respect to the source of his information on the number of traffic police men employed in the City of Pittsburgh?

THE COURT: No, we are not ordering you at all. We are merely suggesting. You continue beating a dead horse. Do you want me to write it out for you?

MR. BOEHM: I have tried to be polite in the conduct of the case, Your Honor, and I hope that my conduct hasn't been upsetting to you. I am sorry if it has.

THE COURT: You see, when it is hot and this is of the essence and we drag out a case, not because you haven't a right to do that, but when we get into a lot of collateral issues

D. M. McNeil - Cross

(293) 307a

that are not directly concerned with the main stream it becomes very frustrating to the Court.

MR. BOEHM: Your Honor, I agree. I don't think that this is relevant, either, and I made objections when this witness took the stand, but now that the Court has permitted his testimony I feel that I have to honestly find out where he got the conclusions or how he arrived at the conclusions that he has given to the Court. If I don't do that I think I am not doing my duty.

THE COURT: Proceed.

(EXCEPTION NOTED)

MR. BOEHM:

Sir, tell me this, did you get these numbers -- you got them over the telephone, you say, is that right?

Yes, sir.

And this was about two months ago?

I'd say about two weeks ago.

And when you got that information you called somebody in the Department of Public Safety?

That's right.

And you can't be any more detailed than that?

I know the records, in my opinion -- if I had to swear to

308a (294) D. M. McNeil - Cross

them, they are correct.

Q You can't give me any more detail on that as to your source of information?

A I promised not to. Look, this is the City of Pittsburgh and I don't want anybody disciplined because they furnish public information.

Q Sir, I am not suggesting that. I hope you understand.

A I had to make that promise on that basis to get the information that I would not divulge my source.

Q I am certainly sorry if you did because that is certainly not the policy of the city. I think the records, as the Court knows, --

THE COURT: We will take a short recess at this time.

(Recess taken.)

BY MR. BOEHM:

Q Mr. McNeil, of those 115 traffic policemen you testified to that were used in 1969 -- is that right, or was it 1970?

A In 1969 it was 156 and in 1970 it was 116. Which was it used?

Q I am interested in both of them, actually. It was 116 in 1969?

A It was 156 in 1969 and 116 in 1970. This is the complement of the Traffic Division.

D. M. McNeil - Cross

(295) 309a

Did you take into consideration or do you know what the cost of those policemen are to the City of Pittsburgh? I don't have the budget with me here, but it is all in the budget.

You don't know what it is, right?

Not at this moment.

In connection with the survey you made for the Plaintiffs in this case, did you calculate the number of persons that come into the Golden Triangle every day?

Well, we qualified that. When you say the number of persons that come into the Triangle -- when you come into the Triangle on the Penn Lincoln Parkway and whether the person is stopped or not -- what is your question?

The question is, did you calculate as part of your survey for the Plaintiffs in this case the number of people who actually come into the Golden Triangle of the city. By the Golden Triangle I don't mean the people who might pass by the Triangle on the Parkway. The people who actually enter the Golden Triangle.

There is no way to get that figure, sir.

Did you take into consideration or calculate the number of people who come into the Golden Triangle every day by automobile?

MR. BOREMAN: If the Court please, that is

310a (296) D. M. McNeil - Cross

objected to. He was not commissioned to make a traffic survey and he has not prepared himself for that.

MR. BOEHM: All he has to do is say no.

THE WITNESS: No.

BY MR. BOEHM:

Q Mr. McNeil, in connection with your survey did you calculate the percentage or the number of people that use mass transit to come into the city as distinguished from the automobile?

A Not for this I didn't.

Q Do you know the number of people who come here to shop as distinguished from the number of people who come here to work and use their automobiles?

A Not as of 1970 I do not.

Q Did you use those figures in arriving at the conclusions that you gave the Court in answer to Mr. Boreman's question?

A No, I did not.

Q Do you know what the average stay of the person who drives his car into downtown for shopping purposes is?

A In a general sense. Between two and three hours.

Q Was that one of the things that you took into consideration in connection with this survey that you made?

A The survey that I made here was factual data of the gross incomes and the operating costs of the various facilities

D. M. McNeil - Cross (297) 311a

that are managed or operated by the Plaintiffs.

In other words, your testimony is wholly confined to the financial condition of the operators of these various lots, is that right?

No, it is not. The report dealt with that but not my testimony.

You don't know, do you, Mr. McNeil, how much it costs the city by way of salaries to policemen, meter maids, traffic people who are charged with towing and impounding automobiles to service the traffic problem in the City of Pittsburgh -

No, sir.

- downtown area?

No, sir.

You did read the study done by Wilbur Smith?

I read a paragraph out of it, Paragraph No. 2 of his letter of introduction.

Are you familiar, sir, with the entire survey of the parking study?

I have read it in general, in a general sense. I can't tell you every detail of it.

Do you agree with it?

Yes, I do.

You agree with the conclusions reached by Mr. Smith?

Yes.

312a (298)

D. M. McNeil - Cross

MR. BOREMAN: That is objected to, Your Honor. What conclusions is he referring to?

MR. BOEHM: I am referring to them all. I didn't limit them.

MR. BOREMAN: Are you asking if he agrees with every conclusion in that book?

THE WITNESS: I thought you meant in a general sense. I'd have to go over the entire report piece by piece.

BY MR. BOEHM:

2 Is there any major item that you noticed when you read the report that you would disagree with?

MR. BOREMAN: I object to that, Your Honor, unless he asks him what conclusion he is talking about. That is a vague question.

THE COURT: We will sustain the objection.

(EXCEPTION NOTED)

MR. BOEHM: I hate to take up the Court's time, Your Honor, and go through these conclusions one by one and ask him if he agrees or disagrees. I am limiting it to only the major one, as the Court suggested. My question was, is there a major item in this report with which he disagrees? I can't really see what is objectionable about

D. M. McNeil - Cross (299) 313a
that.

MR. BOREMAN: If Your Honor please, I object to the question. Mr. McNeil did not prepare this report. He was not called as an expert witness based on whether he agrees or does not agree with that report. To ask him that question is incompetent, immaterial and irrelevant unless he specifies what conclusions he is talking about. That is not his report, that is Mr. Smith's.

MR. BOEHM: Mr. McNeil is an acknowledged expert, Your Honor. He read from the report, he is familiar with it. He read it, and I think in the area of his expertise it is perfectly permissible to ask him if he agrees with its major conclusions.

THE COURT: Do you or don't you agree with the major conclusions?

THE WITNESS: In general I do, sir.

THE COURT: The answer is in general he does, yes.

MR. BOEHM:

So that you agree, Mr. McNeil, that at the present time the city is in need of -- did you say 26,000 parking spaces?

A Yes, sir.

Q You don't mean 26,000 additional?

A I do not, I mean total.

Q You mean total 26,000?

A Yes.

Q At the present time how many parking spaces do we have available in the downtown area?

A Around 23,500 and another 700 on the street.

Q So that you would say at the present time in your opinion there are 2,000 additional parking spaces needed in the Golden Triangle area of the city?

A I'd like to qualify the word "need" if I may, Your Honor. What is needed and what you can support many times aren't the same thing. Yes, we need 2,000 more parking spaces downtown. I don't say necessarily you can support them.

Q Did you get those figures from Mr. Smith's survey?

A I have Mr. Smith's survey.

Q I say, did you get those figures that we have been referring to --

MR. MARKS: The questions are a little bit misleading. I don't mean deliberately so.

The survey talks about 100 spaces and Mr. Smith has adjusted the figures to come out to 2100 and asks the witness, "Do you agree with

D. M. McNeil - Cross (301) 315a
Mr. Smith's study" and the figure became 2100.

MR. BOEHM: I never thought of that, but it
might be a good idea. I am not doing that at
all.

MR. BOEHM: I wanted to know if the basis for your figures on need
were obtained from Mr. Smith's survey or if you conducted
an independent survey of your own to come to that conclusion.
I did not conduct an independent survey of my own.
Did you come to that conclusion on the basis of Mr. Smith's
survey?

Mr. Smith is a very qualified engineer and does work similar
to what I think I do, and I would not challenge him.

Is that where you got your ideas on it?

Yes, I did, because it's well documented. It's there and
it's ready information.

Isn't it true that Mr. Smith's survey takes into considera-
tion the present economic condition of the city today with
respect to -- not economic condition, that is too broad --
with respect to the economics of parking charges?

Not necessarily. I did not gather that fact.

Is it your opinion that we need a couple of thousand, or so,
extra parking spaces, there is a demand for this? I think
you used the word "demand."

A That's right.

Q But there is not a demand for it at present prices?

A I don't think you can support 2,000 more spaces today at what it would cost.

Q At the current price being charged for parking today do you think that the city can support any additional parking spaces?

A Now, wait, give me a cost of these parking spaces. You just talk in general. If you talk on fringe parking, if you talk about parking across the river on the North Side if you talk up on the Hill, if you talk within the inner part of the Triangle I have to give you a different answer.

Q The Golden Triangle.

A You had better be on the fringes if you are going to support them out where property values aren't high.

Q Today at present prices there is not a demand for additional parking in the core area?

A I don't think you can support it at the cost you would have to pay today.

Q When I said demand, I mean support, in an economic sense, considering laws of supply and demand.

MR. BOREMAN: Ask the questions, if Your Honor please. Is there a demand and can it be supported are two different things. Which do

D. M. McNeil - Cross

(303) 317a

you mean?

MR. BOEHM: I told him what I meant.

THE COURT: I think the witness has

answered the question. We understand that.

MR. BOEHM:

In the core area is there a demand in the economic sense, you know what I mean, don't you, the law of supply and demand?

You will never support them in there today. There is a need, you can't support them.

In the economic sense of a demand there is no demand for additional parking facilities in the core area of the Golden Triangle, the people are not demanding more space to park because nobody will pay the price?

If you put 2,000 spaces in and made them very low cost they'd be used, but if you have to charge what it actually costs to develop it they will not be used.

Let us assume that the price is the price that is currently being charged in the area of the Golden Triangle.

MR. BOEHM: He has answered this about --

THE COURT: Objection sustained.

(EXCEPTION NOTED)

MR. BOEHM:

At the present time you say, Mr. McNeil, there are 24,000, or

318a (304) D. M. McNeil - Cross

so, parking spaces in the area of the Golden Triangle, is that right?

A Including the street, yes.

Q There are 700 on the streets and the remainder in parking garages, right?

A That's correct.

Q And at rush hour in the early morning hours when people are coming to work and in the evening when people are leaving work we have our greatest congestion on the streets, is that right?

A Those are our heaviest periods for traffic movement, yes.

Q What percentage would you say of those automobiles that are on the streets at that time in the morning were going to a parking lot in the Golden Triangle or in the evening had left a parking lot in the Golden Triangle?

A I'd say about 40 per cent.

Q Forty per cent?

A Um-hum.

Q Where would you say the remaining 60 were going?

A The other somewhere near 15 to 20 per cent would be coming in to discharge or pick up people and the other would be what we call through traffic, people who were going from North Side to South Side or people coming from West End going up on the Hill.

D. M. McNeil - Cross
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(303) 317a

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318a (304) D. M. McNeil - Cross

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A The other somewhere near 15 to 20 per cent would be coming in to discharge or pick up people and the other would be what we call through traffic, people who were going from North Side to South Side or people coming from West End going up on the Hill.

Is it your opinion that those twenty-three or twenty-four thousand spaces that we now have are almost all being used every day, or what percentage of them would you say are being used?

A goodly percentage, better than 90 per cent are being used. And certainly, then, 90 per cent of 24,000, if we calculated that, we could say that number of automobiles were using parking spaces downtown?

If they came and departed at that particular period, yes.

I said the department stores and the hotels are the things that really draw the traffic congestion, or I think they were the ones you used.

I said they were one of the principal generators.

They were the generators.

And would you consider the parking spaces that we have available here, those 24,000 parking spaces, as a primary generator of this traffic?

The parking spaces don't generate traffic, it's the buildings, the stores, the hotels, the department stores that generate the traffic.

Are you of the opinion that if we had the department stores and the hotels here and didn't have those 24,000 parking spaces we would still have the same number of automobiles?

You would have one of two things; you would either have

people avoid the Triangle because of no place to stop or you'd have the streets so seriously congested that nobody would come near the Triangle.

Q Isn't there another alternative?

A I suppose you are going to say the use of mass transit vehicles. I think we're a good piece off from that.

Q That obviously is the other alternative.

There is more than one way to get downtown. You don't have to use automobiles to get downtown.

A You can walk downtown if you want to, if you want to get up early enough.

Q I imagine a lot of people do.

A When I was here approximately 15,000 people walked into the Triangle daily.

Q You would agree, though, that if the 26,000 or 24,000 spaces were not here we wouldn't have the number of automobiles that we do have on the streets today?

A I don't think you could have them.

Q You couldn't have them, right, there wouldn't be any place to park them when the people came here?

A That's right.

Q When the Parking Authority was first created by legislation in 1945, I think you said you participated somewhat in seeing that law pass?

Yes, sir.

It is true, isn't it, that since that time parking rates have constantly increased?

Yes, sir.

And since that time I suppose the number of parking spaces available has also increased?

Well, we have approximately 11,000 more spaces today than we had at the time of my original study.

So there was an additional number of spaces made available for people to use?

Yes, sir.

And the price kept getting higher and there is still a need for more parking spaces, would you agree with that?

That's what I testified. Now, remember, I qualified that need with what I told you before when you could economically support that need.

And in your opinion we couldn't charge any higher price than we now have and employ additional parking facilities in the downtown area?

That's right.

Just let me ask you how you came to that conclusion.

With construction costs today, operating costs, today, costs to borrow money today, the general overall cost of everything, you couldn't possibly.

Q It is not because of the fact that the city has increased the parking tax from 15 to 20 per cent?

A The parking tax is 20 per cent on top taken off of that. As a matter of fact, the 20 per cent tax is actually a 25 per cent top cost that you have placed on top of the parking industry. You will destroy the industry with this parking tax.

MR. BOEHM: If the Court please, he has asked him the question about whether there is demand in the economic sense of the public being able to support higher parking rates for these 2,000 spaces and he is answering why.

THE COURT: He has answered the question. He is entitled to explain it. That is what he has done.

MR. BOEHM: I think he has answered the question.

THE COURT: I am glad you agree.

BY MR. BOEHM:

Q Have you been in contact with the Bureau of Traffic Plans in recent months with respect to studies that are currently being undertaken with respect to traffic congestion in the downtown area?

A No, sir. I've talked to certain of the staff but not with

reference to that specific subject.

We are not aware of any study that has been undertaken with respect to eliminating backups and congestion at parking facilities?

That's the function of the Bureau of Traffic Planning, they should always be doing that, and that's its function, its purpose.

MR. BOREMAN: If the Court please, may I ask that the last question of counsel be stricken from the record unless he is prepared to state that he will back it up with testimony as to studies being made by the Bureau of Traffic Planning relative to traffic backing up or congregating or causing congestion in a parking garage. There is nothing in this record -- unless counsel is prepared to say that there are such studies in progress, I ask that the question be stricken.

THE COURT: Did you hear his objection?

MR. BOREMAN: Yes, Your Honor.

THE COURT: Are you prepared to state whether or not there are backup studies with regard to traffic congestion as a result of these --

324a (310)

D. M. McNeil - Cross

MR. BOEHM: Yes, Your Honor.

MR. BOREMAN: May I ask Your Honor whether he is prepared to produce testimony in regard to those studies so I will have an opportunity to cross-examine them.

MR. BOEHM: I am prepared. I could if I wanted to.

MR. BOREMAN: I ask the question be stricken until such time as he does or says that he is going to.

MR. BOEHM: I am just asking him if he is aware of it to see in what area he is an expert, what studies he has really made to come to the conclusions that he has come to.

THE COURT: We will leave the testimony in the record with the assumption that you are going to back up what counsel for the Plaintiff has suggested, otherwise that testimony will be stricken. You may use your own judgment as to whether or not you want the testimony stricken.

(EXCEPTION NOTED)

BY MR. BOEHM:

Q Would it be your opinion, Mr. McNeil, that if we restrict or forbid the use of the automobile in the Golden Triangle

these department stores and hotels would be able to continue
in business?

MR. BOREMAN: That is objected to, Your Honor, as a hypothetical question that has no foundation in reality. Everybody knows that is not going to be or can't be.

THE COURT: I didn't quite follow that question. Would you repeat the question, please?

MR. BOEHM: If we selected an area and forbade the automobile to enter it, banned the automobile and therefore eliminated the need for parking, would these businesses that he says generate the traffic congestion be able to continue?

MR. BOREMAN: He is not prepared to answer that, Your Honor.

THE COURT: That is too far a matter of conjecture, Counselor. That is too far out, that is too much a matter of conjecture to ask for opinion evidence in a situation of that sort, particularly relative to the case at issue. I don't think that is a proper question.

(EXCEPTION NOTED)

MR. BOEHM: That is all I have, Judge.

MR. BOREMAN: I just have a couple questions, then we will finish.

- - -

REDIRECT EXAMINATION

BY MR. BOREMAN:

Q Mr. McNeil, you were asked as to the number of people who come into the Golden Triangle and the number that come in by mass transit and the number that come in by automobile when they come in to shop or work.

Regardless of whether they walk or ride or come in to shop and work, isn't it true part of them will walk, part of them will use mass transit, part of them will use parking garages?

MR. BOEHM: I object, Your Honor. He is leading his own witness.

BY MR. BOREMAN:

Q Regardless of the number of people who come in to the downtown area and whether they walk or ride, will the existence of parking garages contribute to congestion caused by those people coming in?

A No.

Q Just to make the record clear, I have two final questions pardon me, one question.

In cities that now have mass transit systems, good mass transit systems, is there still a need for parking garages?

Yes, sir.

Mr. McNeil, as an expert in this field and in your opinion is there any basis or rationale to support the conclusion that parking garages cause congestion and require additional municipal services so as to justify a tax?

No, sir.

In your opinion, will a parking tax, whether it be of ten, fifteen or twenty per cent, destroy the parking industry?

Yes, sir.

MR. BOREMAN: I have no further questions.

MR. BOEHM: Now, I am going to move to strike the last question and answer unless there is a proper foundation laid, unless this witness tells us what the basis for his conclusion is with respect to the parking industry and further for the reason that it is not relevant here because the question is not whether the parking industry will be at some time in the future destroyed but the question is whether or not the parking industry is or has been destroyed as a result of the parking

tax.

BY MR. BOREMAN:

Q Give your reasons, Mr. McNeil.

A Exhibit 1 shows you are well on your way to destroying it with the taxes.

MR. BOEHM: The record shows that the only basis for the witness's last answer is Exhibit 1.

BY MR. BOREMAN:

Q Does the witness care to add to that?

A In the first place, I think this exhibit very dramatically shows it. I've told you that you have already -- you can't think of raising prices, in my opinion, in downtown Pittsburgh. You can't think of it. You have already destroyed the industry with the 15 and the 20 per cent tax as indicated here. Even the 10 per cent has gone way out, if you study Exhibit 1.

Q With respect to the possibility of acquiring financing to build new garages or new structures, what is the effect of the tax?

A I think it's going to be a long time before you finance more garages in the core of the business area.

Q Why?

A Because of the cost of financing them, because of the tax that is on top of all of it and because of the cost of

D. M. McNeil - Recross (315) 329a

operation and the cost of construction. But the overall, before anything else comes out of this, you have the tax on top, you have that to boot. You are destroying the industry.

MR. BOEHM: Are you finished?

MR. BOREMAN: I am finished.

RECROSS-EXAMINATION

MR. BOEHM:

Mr. McNeil, what is the average daytime all-day parking rate in the Golden Triangle area of the City of Pittsburgh?

MR. BOREMAN: You mean of the Parking Authority or private operators?

Your Honor, there is a big difference.

MR. BOEHM: Private operators, Your Honor.

MR. BOEHM:

I don't have to have an exact figure. Roughly.

MR. BOREMAN: If Your Honor please, that is already in evidence as an exhibit. I think it is an exhibit -- I can find it.

MR. BOEHM: Let the witness answer the question.

MR. BOREMAN: We will save some time.

MR. BOEHM: Go ahead, show it to him if it

330a (316) D. M. McNeil - Recross

is there.

THE WITNESS: The average parking rates eight downtown Parking Authority garages for nine hours that was effective on February 1, 1970, was \$2.56 and in the privately owned parking garages for nine hours was \$2.37.

BY MR. BOEHM:

Q In the private lots the average is \$2.37?

A Yes, sir, for nine hours.

Q Now, for the Parking Authority lots it was \$2.76 average, right?

A For the Authority lots, eight lots, it was \$2.56.

Q It was \$2.56?

A Yes.

MR. BOREMAN: How much for the private lots again?

THE WITNESS: \$2.37 for the nine-hour rate. That is the average for the eight facilities.

BY MR. BOEHM:

Q Aren't the Authority lots pretty well used, Mr. McNeil?

A The Authority lots are geared to primarily -- are geared to favor the short-time parker.

Q We are talking about the nine-hour rate.

A The nine-hour rate is approximately 19 cents less in the

D. M. McNeil - Recross (317) 331a

private operator lots than in the Authority. But the one-hour rate in the private-operators' lots is almost double what it is in the Authority lots. And the two-hour rate in the privately owned garages is 96 cents as compared to the Authority garages of 55 cents, and the three hour rate in the privately owned lots is \$1.18 as compared to 80 cents.

Are the Parking Authority lots operating at close to maximum use of their lots? Are the people parking in the Parking Authority lots in spite of the fact that their average rate is \$2.56?

They are operating almost to capacity, yes.

And the private lot averages \$2.37 and they are operating at almost capacity, also?

I don't know that they are all operating at capacity, but those properly located lots are being well occupied and those garages.

Can you explain to me why you take the position that a private lot cannot increase its price over and above that \$2.37 and still operate at close to capacity?

I believe that \$2.37 is pretty expensive to come to work in downtown Pittsburgh.

But the people are paying it.

Some people are paying it.

But the lots are operating at close to capacity.

- A In some instances, yes. You heard Mr. Smith tell you he has 400 vacancies up at Chatham Canter.
- Q Can you explain to me why with the \$2.37 rate that we have now, average for the private lot, and with the 20 per cent parking tax that we now have and considering the fact that the private lots are operating at near capacity that this increase of five per cent is destroying the parking industry?
- A I didn't say the increase of five per cent. I think the fifteen per cent and the ten per cent were starting to destroy the industry.
- Q I mean the increase of five to make it twenty.
- A I made the statement that that was the straw that broke the camel's back. You have already crippled it, but you are destroying it, in my opinion.
- Q Are you taking the position that a five per cent or a seven per cent parking tax destroys the industry?
- A It's like a boat in water, you can only put so many pebbles in. When you put that next piece of gravel in, down goes the boat.
- Q It is similar to any business, isn't it, if the cost of business increased, whether it be in the way of taxes or operating expenses, that boat continues to go a little lower in the water, it doesn't make any difference what business you are in. The question is, how much can you

D. M. McNeil - Recross (319) 333a

is that boat and still have it continue to float.

Yes, sir.

With respect to the private lots, it put \$2.37 in that boat and it is floating, it is doing well, it is loaded with passengers.

It's not doing well. If you take Exhibit 1, it's sick, it's sick and it's going out of business.

But they are operating at close to capacity.

MR. BOREMAN: He didn't say that, Your Honor.

You asked him about the Public Parking Authority garages.

THE WITNESS: I said some key located lots is what I told you.

MR. BOEHM:

I don't remember that phrase, but you say it is only the key located lots --

MR. BOREMAN: He has said it four times.

If Your Honor please, may I ask counsel to say, is he referring to Public Authority lots or private lots or both, and is he referring to the question of long-time parking, is that operated to capacity in respect to Public Authority lots and private authority lots?

MR. BOEHM: I think it is perfectly clear,

334a (320) D. M. McNeil - Recross

Your Honor. I am saying private lots, \$2.37; Parking Authority lots, \$2.56. I am talking about the privately operated lot right now.

MR. BOREMAN: Let him answer.

MR. BOEHM: I am sure he has forgotten the question now.

THE COURT: I think we have all forgotten the question.

MR. BOEHM: Let me try it again.

MR. BOREMAN: I would like to know where gets his rates.

MR. BOEHM: I am getting my figures from what Mr. McNeil gave me. Mr. McNeil has told me the average price for the private lot, and I think he said nine hours is \$2.37 and the average price of the Parking Authority lot for an all-day parker, nine hours, is \$2.56.

BY MR. BOEHM:

Q Is that right, Mr. McNeil?

A That's right.

Let me qualify this. Let me straighten this up. The rates became effective February 1, 1970 in the Parking Authority garages. They were just changed and the figures that I quoted to you were those that were just changed.

D. M. McNeil - Recross (321) 335a

Wilbur Smith's report shows just the reverse.

What does he show?

Reason?

What do you mean by just the reverse?

Wilbur Smith's report --

I don't really have to have Wilbur Smith's report.

It depends for the moment when you ask for what the rates were. I told you what the rates were for today.

What I can't understand -- let me put the question again.

When you load this boat that you are talking about with \$2.37 and the other operating expenses and taxes and it still continues to float, and now you say that the key locations are operating at near capacity, the other locations aren't, I don't know what you said. Fairly well used.

Parking is still a problem, finding a parking space is a problem today, whether you want to find it in an Authority lot or a private lot.

That's right.

The Authority has loaded its boat with \$2.56 and it is still tough to find a space there. I can't understand why you are saying that you can't increase that \$2.37 price any more or that boat will sink.

Now, the \$2.37 are what the Parking Authority is charging

336a (322) D. M. McNeil - Recross

as of February 1, 1970. This is the average nine-hour rate in the Public Parking Authority garages as of February 1, 1970.

Q I understand that.

Would you say, for example, that if the private lots raised their price from \$2.37 for the average price for the nine-hour stay, from \$2.37 to, say, five per cent in excess of that, whatever that figure would be, they would lose their customers?

A If they raised from \$2.37 would they lose their customers is your question?

Q What is five per cent of \$2.37?

A Of course, you are assuming that the entire garage is filled with nine-hour parkers. That is what you are assuming under that question.

Q If they raised it eleven cents, which would be five per cent of \$2.37, maybe twelve, twelve cents, instead of charging \$2.37 they charged, maybe, \$2.50, would that be the straw that broke the camel's back?

A If all the cars in this garage were all-day parkers and you collected \$2.50, they wouldn't make near the money they are making today by catering to short-time and long-time parkers.

Q That is not my question, sir.

last question was if I raised the nine hours five per cent would I break the camel's back. Yes, if every car in the unit was nine-hour parking, yes, you will, and it's a dead unit then.

You know that is a hypothetical which doesn't exist.

MR. BOREMAN: I object, Your Honor.

THE COURT: We will sustain your objection.

Let us not get in an argument with the witness.

MR. BOEHM: He is answering my question by use of a hypothetical, Your Honor, which has no basis.

THE COURT: The way the question is put, there is no other way to answer it; and secondly, you are getting argumentative here, Counselor.

MR. BOEHM: I am sorry, Judge. Can I ask the question again?

THE COURT: We sustained the objection. You see, what you consider in presenting your position is based on the figures as they were prior to the present-day situation, what they are today and the effect, not conjecture. If they do this, or perhaps they may do that, it is a question as to what they have done and

what the situation is now.

MR. BOEHM: I think that is right, Judge, but the witness has testified over my objection that the situation is at its breaking point and we can't raise those prices any further, and he said, "Yes, we are using those spaces at near capacity but if you raise those prices any more there won't be a need for an additional 2,000 parking spaces," and that is what I am asking about.

THE COURT: The witness has just answered that. You see, the whole point is this, as I understand what they are trying to get across here, that by the city continuing to raise the tax or raise it as it has done, it is putting the parking lot people out of business, it has raised this to a point where they cannot economically and reasonably attract customers to use their parking spaces. It is as simple as that.

MR. BOEHM: That is right, Your Honor.

THE COURT: And it has now become

confiscatory, in their estimation, and it is going to put it out of business. It is like these continuous strikes. Every time there is a contract that comes up and they have a strike, they raise the ante, they get a raise in wages. What is the result that is passed on; we have inflation. The industry, as such, is put out of business because it can no longer compete because of the high costs that are required for its operation; and it is the same thing whether it is by strikes or whether it is by taxes, or what source. It is the same thing. When you reach the saturation point you are no longer competitive.

MR. BOEHM: That was my question, Your Honor, with respect to the saturation point.

THE COURT: The witness has answered that. I am satisfied.

MR. BOEHM: I am not.

THE COURT: Do you have another

question?

MR. BOEHM: I would still like to know how he arrives at the conclusion that if that price is raised from \$2.37, which is presently being charged, to \$2.50 why it would be that raise which broke the camel's back.

MR. BOREMAN: If the Court please, I object. He has answered the question.

MR. BOEHM: Is the Court sustaining that objection?

THE COURT: As I told you before, we will permit the witness to answer it again. We are satisfied that he has already answered it.

Now, Mr. McNeil, can you answer the gentleman?

THE WITNESS: Counsel is assuming that the raising of that nine-hour rate -- that one rate by five per cent is not going -- will not cause the breakdown. The nine-hour factor is not the whole thing. In other words, there's a lot of people on

D. M. McNeil - Recross (327) 341a

hour, a lot of people two hours, a lot of people three hours. Good management of a garage is not to have 25 per cent of your cars all-day parkers. The day you make a garage operate for all-day parkers for this meager rate of \$2.56 you are in trouble. You must cater to the short-time parker to have a successful financial program. Raising that to \$3.00 isn't going to help this because they have to live on the turn-over.

A. NOHIM:

If you raised the short-term parkers' rate, would you have it?

I've answered that question. I've told you that the 72 cents an hour is already prohibitive and is ruining the industry and stopping people from coming downtown to shop, in my opinion.

Are you saying that the number of people who park downtown short term has been drastically reduced?

In my opinion, yes.

As part of your survey did you calculate the number of people that come downtown to park short time?

342a (328)

D. M. McNeil - Recross

A The study I have made, this particular Exhibit 1, does not show that information. This is other information that was gathered throughout the years that I have reached that conclusion.

Q When did you come to this conclusion that you are giving today?

MR. BOREMAN: Which conclusion, Your Honor?

MR. BOEHM: The conclusion that the short-term parker -- the number of short-term parkers has been drastically reduced.

BY MR. BOEHM:

Q You didn't do it for Mr. Boreman in connection with this survey. Did you make other studies?

A I live in Pittsburgh, I speak with many Pittsburghers, I have many women tell me -- I am constantly being informed of that information by people who live in the area. I have two newspaper clippings --

Q I don't think we want to see those.

A -- that are worth listening to.

Q They are not admissible in evidence. I would object to your doing it.

D. M. McNeil - Recross (329) 343a

MR. BOREMAN: You asked him how he knows it and he is going to tell you what his source of information is.

THE COURT: He has suggested that he has these various things. Now we have the answer.

MR. BOEHM: You are right, we have the answer.

MR. BOREMAN: In other words,

Mr. --

MR. BOEHM: Wait a minute. I am not finished.

MR. BOEHM: In making your study for the Plaintiffs in this case, Mr. McNeil, did you take into consideration parking facilities in downtown Pittsburgh that were owned by other people, people other than the Plaintiffs in this case?

MR. BOREMAN: If the Court please, that is objected to as being irrelevant. He was commissioned to make the study of the Plaintiffs' financial picture and nothing else. That is the extent of his

344a (330)

D. M. McNeil - Recross
study, and he is asked as to financial
conditions of the Plaintiffs only based on
that study. He was not asked to make any
study of people other than the Plaintiffs

THE COURT: He can answer that.

(EXCEPTION NOTED)

BY MR. BOEHM:

That is it, then, and that follows, Mr. McNeil, that the
conclusions you have arrived at in court in answer to
Mr. Boreman's questions and the conclusions you have given
the Court on cross-examination from me are applicable only
to the parties who are Plaintiffs in this case?

MR. BOREMAN: That is objected to.
He testified while he made a study of the
Plaintiffs he has over 40 years of
experience as a parking consultant,
traffic consultant; and his testimony as an
expert witness is not limited to parking
facilities of the Plaintiffs only. The
financial picture that he testified to is,
but the conditions of parking in Pittsburgh
is not and I think the question is unfair.

Colloquy

(331) 345a

MR. BOEHM: Does the Court want to rule on that one?

THE COURT: I think the way that counsel has put it that the report here upon which Mr. McNeil was commissioned to make for and on behalf of the Plaintiffs is relative to the financial aspect of this thing. As to the other information that the witness testified to with respect to the traffic and the traffic lines, the traffic congestion and all those other items that you brought out in direct examination, was testified to on the basis of his past experience. He has been qualified as an expert in this field and particularly in the field in which he was testifying to and about.

MR. BOEHM: That was my understanding, Judge.

THE COURT: Very well, so that the question is answered.

MR. BOEHM: Except I want it made clear that the conclusion that he came to

concerning the financial condition of
parking lots in the City of Pittsburgh is
applicable only to those parking facilities
which are listed in Exhibit 1.

THE COURT: That is not the conclusion
that he came to, if I understand his
testimony.

MR. BOEHM: Can I ask him, Judge?

THE COURT: His conclusion, as I
understand his testimony, was that if the
city continues to raise the ante on their
taxes that parking facilities will be cut
of business period.

THE WITNESS: That is correct.

THE COURT: It wasn't limited to the
losses that these Plaintiffs have sustained
by virtue of their testimony.

MR. BOEHM: Can I ask him?

THE COURT: Is that correct?

THE WITNESS: That is correct.

Except one thing, I said not only when
they are today but they have hurt
the past, even the 15 and the 10 per

Mr. McNeil, let me ask you if you did your survey, and your survey is Exhibit 1, and you have before you only the financial condition of those parking lot operators, how can you testify that other parking lot operators are being driven out of business and at the same time admit that you didn't take their particular financial situation into consideration?

MR. BOREMAN: If the Court please --

I will withdraw the objection. Answer the question.

THE WITNESS: In my field we are constantly seeking any information that we can receive whether they are these garages or any garages, we are constantly trying to get additional information, and from time to time we get additional information. You heard Mr. Stabile bring up the Shadyside Hospital.

BOEM:

That was objected to, and the Judge ruled that should not be part of the evidence.

348a (334)

Colloquy

MR. BOREMAN: That is not correct.

MR. MARKS: Mr. Stabile's testimony came in without objection.

THE COURT: Let us not get into this past history. The witness is trying to explain to you how he has arrived at these conclusions. Now, let us cut out this horse play and devious cross-examination and get down to the merits here.

I say to you, Counsel, and I have suggested to you before that you have every right to your cross-examination and can certainly make it on a broad scope and we propose to grant you that privilege. But don't abuse it. We think up to this time we have extended you every courtesy and we think that further cross-examination of this witness along the lines that you have been following is repetitious and unwarranted in the circumstances for the reason that the witness has answered the question a half

a dozen times in a half a dozen different ways.

Now, let us proceed, if you have anything further.

MR. BOEHM: May I say something to Your Honor.

THE COURT: You may.

MR. BOEHM: The reason for the question is that in my opinion of the law Plaintiffs have the burden of proving that the parking industry as a class, not specific operators, are having their business confiscated by this parking tax so that I thought it was important for the record to reveal whether Mr. McNeill has made a study with respect to only certain operators or whether he has made a financial study with respect to the parking operators as a class or as a whole, and I asked him that question, Your Honor, and he started to tell us that he has other sources of information and started to explain what they were when we

350a (336)

D. M. McNeil - Recross

were interrupted. All I really wanted to do was to ask him to finish answering that question and I will be satisfied.

THE COURT: Do you remember what the question was, Mr. McNeil? Maybe we can finish it.

Can you rephrase your question?

THE WITNESS: I started to talk about Shadyside Hospital, and then he stopped me.

THE COURT: That is right.

BY MR. BOEHM:

Q Mr. McNeil, what other sources of information in addition to Exhibit 1 which you have prepared are you relying on to come to the conclusion that parking lot operators other than those who are Plaintiffs in this case are being put out of business by reason of this parking tax?

A I don't have sufficient information to answer your question. Let me say in the consultant field as consultants, every source of information, every operation you can get hold of, every publication -- Why do I have Wilbur Smith's book? We interchange our thoughts and ideas, and we're

constantly getting information so we can broaden our knowledge and serve our clients better. From all of the information I have been able to sift out of the clients I serve in Pittsburgh and elsewhere, I couldn't -- In the instance of Mellon National Bank, if they would ask me to make a financial feasibility study of the erection of Mellon Square Garage, if they were to ask me today if I would certify such for it to be financed by the H. K. Ferguson Company I would say positively no.

You say where do I have the information -- from any source I can get the information. I even started to read two newspaper publications, and you stopped me. They are publications made by the University of Pittsburgh, by the department stores, by the Office Builders and Managers Association. Any place we can get information we attempt to get it so that your backlog is such we can answer these complicated questions when they arrive.

MR. BOEHM: It is difficult, Your Honor, to say the answer is any place he can get it. I asked him what the source was.

THE WITNESS: I have numerous reports down in my office.

352a (338)

D. M. McNeil - Redirect

THE COURT: The witness has pointed out various items, University of Pittsburgh newspaper clippings, talking with individuals, neighbors, women, people who come in and out of town all down the line all in his field of traffic concern. That is where he gets his information.

MR. BOEHM: I am satisfied, Judge.

- - -

REDIRECT EXAMINATION

BY MR. BOREMAN:

Q What percentage of the parking operators, private parking operators, in Pittsburgh do the Plaintiffs maintain? What are the percentage of the Plaintiffs to all of the parking operators?

A About 60 per cent.

Q You testified that out of the 23,000 parking spaces these Plaintiffs have about 18,000?

A 17,000.

MR. BOREMAN: I have no further questions.

MR. BOEHM: I would just like to conclude, Your Honor, by moving to stop.

Colloquy (339) 353a

that portion of this witness's testimony which relates to the financial condition of parking lot operators other than those who are Plaintiffs to this case by reason of the fact that a proper foundation for that testimony has not been laid since it is based on the hearsay that the witness has already explained in the answer to my question.

MR. BOREMAN: He is here as an expert witness, he has given his opinion. If counsel wishes to cross-examine, as he has done, going to the weight of the testimony, he is free to do so; but I think the testimony is admissible as opinion evidence. Whether the opinion is supported or not supported is a matter for the Court to decide.

THE COURT: That is for the Court to decide as to the weight of it.

MR. BOEHM: The difficulty I had, Your Honor, is that the sources of that

information aren't presently in court.
I can't see them.

THE COURT: We appreciate your position. We overrule your objection. We understand the situation here. We will consider it for what it is worth.

(EXCEPTION NOTED)

MR. BOREMAN: If Your Honor please, the Plaintiffs rest. I have no further testimony.

THE COURT: Do you have any witnesses that you want to present on your side, Counsel?

MR. BOEHM: What I would like to do, Your Honor, is place on the record a motion for a compulsory nonsuit on the basis -- I suppose I should wait to see whether Your Honor wants to hear argument.

MR. BOREMAN: Your Honor, I don't know how there can possibly be a compulsory nonsuit. The issues raised in here are two; one is a legal issue which depends on the facts that were

Colloquy

(341) 355a

presented here and on which no argument or brief has been filed. The second is the confiscation. The first issue on uniformity depends on facts here in part and part on the legal issue. Your Honor will have to consider the facts as applied to the law in the uniformity issue. I think we have four different grounds for that uniformity issue.

THE COURT: Counsel's position procedurally is correct, this is the time for his motion and the Court to rule, depending on how we decide, then depending on whether or not counsel would put in their side of the case as I understand it. Isn't that it?

MR. BOEHM: Yes, Your Honor.

THE COURT: Let us present that tomorrow morning, and if you want to put in your case tomorrow morning I gather we are over the hump on this.

MR. BOREMAN: Yes, Your Honor, I have no further witnesses to present unless he

356a (342)

Colloquy

presents a witness, and I may want to
reserve the right to rebuttal.

THE COURT: We will give you that
prerogative.

I refuse the motion for a nonsuit.

(Whereupon, the hearing was adjourned.)

G. J. Balzer - Direct

(343) 357a

September 17, 1970

Thursday Morning Session

GAYLOR J. BALZER, called as a

witness on behalf of the Defendant, having

been first duly sworn, testified as follows:

DIRECT EXAMINATION

E. BOEHM:

State your full name for the record, please.

Gaylor James Balzer.

Where do you live?

552 Springfield Street, City of Pittsburgh.

Are you presently employed by the City of Pittsburgh?

Yes, I am.

And in what capacity?

City traffic engineer.

How long have you been employed by the City of Pittsburgh?
Over 15 years.

In what capacity were you first employed by the city?

As an engineer of operations for the Bureau of Traffic
Planning starting in 1954.

Did you receive a promotion subsequent to having filled
that position?

358a (344)

G. J. Balzer - Direct

I was promoted to Assistant City Traffic Engineer in 1966.

Did you serve as Assistant Traffic Engineer until your appointment as City Traffic Engineer?

That's correct.

Could you tell the Court something of your educational background, Mr. Balzer?

I'm a graduate engineer from the University of Pittsburgh. I graduated 1952.

Do you belong to any professional societies in connection with your traffic planning experience?

Just the Institute of Traffic Engineers is the only professional society I belong to.

Mr. Balzer, in connection with your duties as the City Traffic Engineer have you had occasion to examine and determine whether or not traffic problems are caused by the existence of parking lots in the City of Pittsburgh?

MR. BOREMAN: Your Honor, I would request an offer from counsel as to what he intends to prove by this witness.

THE COURT: The gentleman has asked for an offer.

Colloquy

(345) 359a

MR. BORHM: We intend to show through

this witness, Your Honor, that traffic congestion is caused in the City of Pittsburgh not by hotels, department stores and other services that are offered to people who may want to take advantage of them but by the very existence of the parking lot, that people will not come to the downtown area by automobile unless they know there is a place for them to leave that automobile while they are taking advantage of these services.

We also intend to show through this witness what the average daily cost to the City of Pittsburgh in the way of traffic policemen is which are necessary because of traffic problems created in the city.

We also want them to show that as the deficiency in parking spaces increases so does the supply of parking spaces, and we

360a (346)

Colloquy

also intend to introduce through this witness a 1963 study which was made concerning traffic in the central business district.

I think that is a fair summation of his testimony.

THE COURT: Is there any objection?

MR. BOREMAN: Just one moment.

No objection, Your Honor.

MR. BOEHM: Can you read the last question back?

(The last question was read.)

MR. BOREMAN: That is objected to, Your Honor, on the grounds it is a leading question.

THE COURT: Read that back again.

(The last question was read.)

THE COURT: The objection is overruled. Proceed. It is calling for a "Yes" or "No" answer. He just asked him if he had occasion to examine it.

(EXCEPTION NOTED)

G. J. Balzer - Direct (347) 361a

THE WITNESS: Yes, I have.

MR. BOEHM:

What is your opinion, sir?

MR. BOEHMAN: That is objected to, Your Honor.

THE COURT: We will sustain that.

Rephrase your question.

MR. BOEHM:

What is the result of your examination, Mr. Balzer?

MR. BOEHMAN: That is objected to, Your Honor, unless he first lays the foundation of this question to show what is the basis of his answer, what studies he has made, and everything else about it.

THE COURT: We will sustain your objection on that basis.

Set the stage, Counselor.

(EXCEPTION NOTED)

MR. BOEHM:

Mr. Balzer, tell me what your duties are as a City Traffic Engineer?

To regulate traffic by the means of sign signals and

362a (348) G. J. Balzer - Direct

markings and make any study that is related to the flow of traffic.

How many people do you have working under you, approximately?

The Bureau of Traffic Planning employees have a hundred and forty some people at the present time.

Generally are these people employed to help you in your duties with respect to traffic control and regulation of traffic?

Yes, they are.

In your capacity as Assistant Traffic Engineer, what was your specific duty?

To aid the City Traffic Engineer in carrying out these specific duties.

In your capacity as Assistant Traffic Engineer and also as Traffic Engineer, did you have occasion to personally daily, almost, consider various traffic problems inside the City of Pittsburgh?

That is correct.

And as part of that study and examination did you take into consideration at all the question of the effect of the existence of parking lots in the City of Pittsburgh

G. J. Balzer - Direct

(349) 363a

on traffic in the City of Pittsburgh?

Yes. I have checked the effect of parking lots to some extent.

And as an expert do you have an opinion with respect to the question --

MR. BOEHM: Am I allowed to go on?

MR. BOREMAN: Sure. I give you permission.

MR. BOEHM:

As an expert do you have an opinion on the question of whether or not parking lots cause traffic problems in the City of Pittsburgh?

MR. BOREMAN: That is objected to, Your Honor. First, the question "What is an expert" is for the Court to determine.

MR. BOEHM: Well, that is right --

MR. BOREMAN: And secondly, simply because he was employed by the city in studying traffic I don't think he is an expert on whether the parking lots cause traffic -- he can testify what causes traffic congestion or was the situation with respect to traffic in Pittsburgh, he can testify to that; but he is

not an expert to give an opinion on whether parking lots cause traffic.

MR. BOEHM: This man is the City Traffic Engineer. There is no one more qualified to testify in any respect to traffic problems in the City of Pittsburgh.

MR. BOREMAN: This question, Your Honor, about parking lots, he was asked whether he made a study of parking lots, and I think his answer was very vague indicating not very much. He said, "I've made some --" I forget what his answer was, but I have a note here. He said, "I've somewhat made a study" or "I've somewhat considered it," or I don't know what the answer exactly was; but he certainly isn't anybody who has made a thorough study of this situation in Pittsburgh.

In the course of all his other duties in the traffic department of the City of Pittsburgh relating to traffic on the streets, putting up stop signs, regulating patrolmen and all the whole myriad of questions that come up he said, "I've made some observati

of it." That doesn't make him an expert.

THE COURT: It covers a pretty broad field, don't you think?

MR. BOREMAN: Yes, I would say that everything in Pittsburgh --

THE COURT: As I recall his testimony he testified that he made studies and recommendations relative to traffic, traffic controls and traffic regulations. Now, in those recommendations he also -- I understand his testimony to have been that he had some study of the parking lot situation. The impression that I got from it was that in connection with these studies relative to traffic control and congestion of traffic in the city, this business of parking lots and parking and whether it was on-street or off-street, came into play with his basic course of duty. Now, maybe I misconceived what the gentleman was talking about.

MR. BOREMAN: I think I would agree with that.

366a (352)

G. J. Balzer - Direct

THE COURT: We will overrule your objection and note the exception.

(EXCEPTION NOTED)

THE COURT: I recommend this, Counselor, that you set a little more window dressing for this specific problem of parking lots, the parking problem, whether off-street or on-street with respect to the parking facilities as being tied into his recommendations; and that way Mr. Boreman will have nothing to complain about, I am sure.

MR. BOEHM:

Mr. Balzer, in connection with your duties as Assistant Traffic Engineer, your entire experience in the Bureau of Traffic Planning, did you have occasion to observe traffic problems in general and also specifically on-street parking and off-street parking? Were all of those things part of your duties in connection with your employment? Yes, they were.

Could you tell the Court what you know as a result of your experience in the City of Pittsburgh concerning traffic problems if there is any connection with off-street parking

G. J. Balzer - Direct (353) 367a

and by that I mean parking lots and parking garages?

I observed during different times of the day -- for example, take a look at the downtown area during the peak period, the off-peak period and the evening peak period to try to determine what has caused some of the backup of traffic on the streets, and I have found out that parking lots are part of the problem of congestion.

Now, would you say that the congestion that you are talking about can be attributed solely to people coming downtown for the purpose of visiting department stores and taking advantage of services here?

MR. BOREMAN: That is objected to.

THE COURT: We will sustain that. You are leading your witness, Counselor. Rephrase it.

(EXCEPTION NOTED)

MR. BOREMAN:

Mr. Balzer, what in your opinion is the cause of that congestion?

Well, --

MR. BOREMAN: That is objected to again,

Your Honor, as a question of opinion. Ask what his duties as a traffic engineer are,

what he found in the performance of his duties, a factual question, not what his opinion is.

MR. BOEHM: Your Honor, the very reason I put this witness on the stand is because he is a witness who is qualified to give an opinion. He is an expert. If Mr. Boreman wishes to conduct a voir dire as I did with respect to his alleged expert, Mr. Buzzard, he has that right and privilege, but he didn't request it.

Now, if he is still concerned with whether or not this man is an expert, I think he should be given that opportunity. I have no objection to his cross-examining on voir dire. But once he has qualified as an expert, as I understand the law, I am entitled to ask him for an opinion as long as it is within his field.

MR. BOREMAN: Your Honor, I think the facts in the record so far do not qualify him as an expert. But if Your Honor thinks

G. J. Balzer - Voir Dire (355) 369a
it is appropriate I will question him on his
voir dire.

THE COURT: All right. Perhaps through
your voir dire examination we can get back
on the mainstream in this case and get to the
meat of it. I will be happy to oblige you.

- - -

VOIR DIRE EXAMINATION

W. BOREMAN:

Mr. Balzer, you say you are a graduate engineer. What
field of engineering?

General engineering.

General engineering?

Yes.

Your studies in the university leading to your degree
had nothing to do with traffic, did they?

No, they did not.

When did you say you began work with the City of Pittsburgh?
1954.

Was that right after you graduated?

No, it wasn't. I worked for the railroad from '52 to '54.

You graduated in 1952?

370a (356

G. J. Balzer - Voir Dire

That's right.

And then you went with the city in 1954?

That is correct.

And you worked in the traffic department, is that right?

That's right.

Have you ever had any connection or any duties in connection with the Parking Authority?

Not until I was appointed as a member of the Technical Board some time in July, I believe.

July of what year?

This year.

You were just now appointed a member of the Technical Board of the Parking Authority?

That's right.

What are the duties of a Technical Board member? What does that board do?

To look over the existing layouts -- proposed layouts of parking garages to try to determine methods of alleviating traffic conditions that might exist due to the building of the garage and problems that could come up concerning that garage.

In other words, to aid in planning the best way to build

G. J. Balzer - Voir Dire (357) 371a

a Parking Authority garage?

That's correct.

Now, you say you were a member of a society. What was the name of that society?

Institute of Traffic Engineers.

How long have you been a member of that?

I would say since about 1956.

And this was two years after you joined the city as a traffic engineer?

That is correct.

What are the qualifications to become a member of that society, the fact that you are employed by the City in the traffic department?

That's right, and you have to have so much experience in the field. It has certain grades: Junior, Associate and Member grades. And I am an Associate member which requires, if I remember right and Don McNeil could correct me, five years' experience, responsible experience, in traffic; and, I think, it requires an engineering degree, although I'm not sure of that.

You don't know whether it requires an engineering degree?

Don shook his head yes. It does.

372a (358)

G. J. Balzer - Voir Dire

MR. McNEIL: Yes, it does.

BY MR. BOREMAN:

Q You mean any engineering degree from any accredited college?

A That's correct.

Q Not necessarily a traffic engineer degree?

A No. There are very few colleges that give traffic engineering degrees.

Q In other words, your experience is solely in the Traffic Bureau as part of the Traffic Bureau of the City of Pittsburgh?

A That's correct.

Q Have you ever published any papers or any studies with relation to parking garages?

A No, I haven't.

Q Have you ever published any papers or studies with relation to traffic?

A No.

Q Have you ever participated in any study with relation to traffic?

A Yes.

What studies are they?

We participate in some degree to most studies that are made by the consultants that come into the city.

In other words, you furnish them the information?

That is correct.

That is your participation?

That is our participation and a review of that written once they publish it.

Have you ever participated in any study with reference to parking garages?

I can't frankly answer that question.

Other than furnishing information to some other bureau?

No.

You haven't?

No.

You say you have furnished information to consultants?

(Witness nods head.)

I take it you furnished information to Mr. McNeil who has testified in this case?

Information to Mr. McNeil and other consultants, yes.

I take it you furnished information to Wilbur Smith in

the study he made of the Parking Authority. Do you recall that?

A Quite possibly -- any accounts usually that have to be taken in regard to this study are taken by our bureau. Now, I am not sure that we participated in this, but I would say possibly.

Q But you personally didn't participate in it?

A No.

MR. BOREMAN: If Your Honor please, on the basis of this examination I object to this witness testifying as an expert. I have no objection to his testifying but not as an expert witness to give an opinion.

THE COURT: Do you wish to proceed with your regular examination?

MR. BOEHM: Yes, Your Honor.

MR. BOREMAN: Did Your Honor make a ruling?

THE COURT: Your objection is overruled. We are satisfied that

Mr. Balzer is qualified sufficiently through training and experience to be classified as an expert with respect to the traffic regulation and control and related matters thereto in the City of Pittsburgh.

(EXCEPTION NOTED)

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DIRECT EXAMINATION (Continued)

BY MR. BOEHM:

Mr. Balzer, would you tell the Court how the problem of traffic congestion is related, if it is, to the existence of parking lots in the City of Pittsburgh?

The fact that the cars want to get to a specific lot, any great amount of cars at a particular time want to get to that same lot or lots create this traffic problem that creates a backup on the streets leading to these lots.

Do you know during what hours most traffic is on the streets of the City of Pittsburgh?

Most traffic in the City of Pittsburgh, the peak hours

376a (362) G. J. Balzer - Direct

are considered to be seven to nine in the morning and four to six in the evening.

Q Do you know during what period most cars are entering or leaving parking lots?

A I would imagine that from the studies that we have made that the cars are entering and the congestion occurs usually during these peak hours that we had talked about.

Q Do you know how many parking spaces there are available in the City of Pittsburgh at the present time?

A From a study that Wilbur Smith had just presented, there's -- let me just -- hold on for a minute. 24,325 spaces available in 1969 for parking.

THE COURT: What was that?

MR. BOREMAN: Just a minute, Your Honor. Wilbur Smith's study is in evidence. He is reading from a piece of paper. Is he saying that that figure is taken from Wilbur Smith's study?

THE WITNESS: That's what I am saying.

THE COURT: What was that figure

G. J. Balzer - Direct

(363) 377a

again?

THE WITNESS: 24,325.

MR. BOEHM:

Do you know at what capacity these lots are operating at the present time?

To my knowledge they are operating close to capacity if not at capacity or just a little bit over capacity.

Now, Mr. Balzer, if there were no parking spaces available in the downtown area of the City of Pittsburgh, would there be a traffic congestion problem that you have just related?

MR. BOEHMAN: That is objected to as irrelevant, Your Honor. There are parking spaces and there is traffic in Pittsburgh and we have a city here. In fact, he testified they are planning new garages. That is a hypothetical question that is completely divorced from reality. What are you talking about, a fairyland?

MR. BOEHM: That is another reason you qualify a witness as an expert, Your Honor, so you can ask him a hypothetical question.

THE COURT: It has to be a little germane to the subject.

MR. BOEHM: I think it is, Your Honor.

THE COURT: I think it is, too. We will overrule your objection.

(EXCEPTION NOTED)

BY MR. BOEHM:

Q Do you remember the question, Mr. Balzer?

A No.

Q I asked you if there were no parking spaces available in the City of Pittsburgh would there be the traffic congestion problem you have just related to us?

A Not as far as the movement of automobiles with this amount of -- the less automobiles possibly that would be coming into downtown there would be less congestion.

Q Now, Mr. Balzer, as a result of your studies and research do you have a figure which you can give the Court

representing the percentage of the total downtown area that is devoted to streets and parking lots?

MR. BOREMAN: That is objected to, Your Honor. We are not arguing about parking on streets or taxing parking on streets; we are talking about parking lots, so let us separate them.

MR. BOEHM: I think, Your Honor, I should be permitted to develop the picture here of what actually takes place with respect to parking in the City of Pittsburgh. This is one way of completing the picture for the Court, what percentage of our land available in the Golden Triangle is devoted to parking lots and streets.

MR. BOREMAN: Well, ask that.

MR. BOEHM: I did.

MR. BOREMAN: You said streets and parking lots.

THE COURT: Proceed. We will

380a (366) G. J. Balzer - Direct
overrule your objection.

(EXCEPTION NOTED)

BY MR. BOEHM:

Would you answer the question?

There's approximately 50 per cent of the downtown area involved in either street use or parking lots.

In connection with your duties as City Traffic Engineer did you initiate a study with respect to the backup on streets caused by parking lots?

Yes, I did. It is just in the initiating stages.

We haven't done too much about it, but we do have some quick studies.

When did you begin that study?

Some time in August, late August, this year.

Did you begin that study at the request of the City Law Department?

No, I didn't.

Did you make that study, was the study initially in any way connected with the suit which we are presently trying in court?

No. I initiated the study on my own due to the fact that

G. J. Balzer - Direct (367) 381a

in my overall look at the downtown area I found that parking lots were creating congestion at different periods of the day.

In connection with that study were there photographs taken?

We have some photographs, yes.

Would you show those photographs to me, please?

(Defendant's Exhibits A, B, C, D, E and F were marked for the purpose of identification.)

MR. BOEHM:

Mr Balzer, I show you what has been marked as Defendant's Exhibit A and ask you to tell the Court what that represents.

This represents a picture showing cars wanting to get into the Kaufmann's lot at Forbes and Cherry. The "Filled" sign --

MR. BOREMAN: If the Court please, I object to the question and move to strike the answer. Let him identify what it is without going into a whole

382a (368) G. J. Balzer - Direct

explanation. The picture speaks for itself.

THE COURT: Yes. What is it?

THE WITNESS: It's a picture of traffic congestion caused by the --

THE COURT: Just tell us what the picture --

MR. BOEHM:

At what location was the photograph taken?

The location is at Kaufmann's parking lot at Cherry Avenue and Forbes.

What date was the picture taken?

9/3/70.

MR. BOREMAN: Who took the picture?

THE WITNESS: A representative from our bureau by the name of Eugene Richey.

MR. BOEHM:

Did he do that as part of your study that was initiated in late August of 1970?

That is true.

After he took that picture did he bring it back to you and give it to you?

He did.

Did you put that in your file in connection with the

study that you were making initiated in late August,

1970?

I did.

MR. BOREMAN: Your Honor, in order to save time I am not going to object even though it is obviously hearsay.

MR. BOEHM: What is hearsay?

MR. BOREMAN: Could we have him put his pictures in and admit them in evidence and go on and the Court can decide for itself what the pictures are rather than --

THE COURT: Do you propose to introduce this group of exhibits, Counselor?

MR. BOEHM: I do.

THE COURT: Is there any objection?

MR. BOREMAN: No objection, Your Honor.

THE COURT: We will admit them.

(Defendant's Exhibits A, B, C, D, E and F were admitted in evidence.)

BY MR. BOEHM:

Q Would you please tell us now that Exhibit A has been offered and admitted into evidence what that photograph shows?

384a (370)

G. J. Balzer - Direct

MR. BOREMAN: That is objected to,
Your Honor. The picture speaks for itself.
I don't think the testimony is proper as to
his interpreting what the picture says.
The picture speaks for itself.

THE COURT: I think his question was
what the picture showed. Isn't that the way
you put it?

MR. BOEHM: Yes.

MR. BOREMAN: It shows what the picture
shows, not what he thinks it shows.

MR. BOEHM: It is going to be hard for
a Court to read the record and be able to
tell.

MR. BOREMAN: The pictures are part of
a record.

THE COURT: Proceed.

MR. BOEHM:

Do you want to answer that question, Mr. Balzer?

It shows the backup of traffic due to --

Not that. Tell me what you see in the picture. Don't
make a conclusion about a backup.

It shows automobiles trying to enter the --

G. J. Balzer - Direct (371) 305a

MR. BOREMAN: That is objected to, Your Honor, and I move to strike it. It shows automobiles lined up on Cherry Way in front of a parking garage.

For example, Your Honor, how do we know the automobile in back of the one turning is going into the garage? It could be going straight ahead. These are conclusions of what it shows. It shows automobiles. He started to say "trying to get into the parking lot." We don't know that.

THE COURT: Limit your discussion here to what counsel has asked for. As I get your testimony thus far, it is a picture depicting automobiles about to enter the Kaufmann's garage located on Cherry Way and Forbes Street in the City of Pittsburgh, Allegheny County, Pennsylvania.

THE WITNESS: Right.

(EXCEPTION NOTED)

BY MR. BOEHM:

Q Is the lead automobile in that line entering the garage?

A The lead automobile is entering the garage.

386a (372) G. J. Balzer - Direct

Q Does it also show cars in back of it all the way back to the intersection?

A It does.

Q What was the date that photograph was taken?

A 9/3/70 or September 3, 1970.

Q And what time of the day was it taken?

A Eleven-thirty in the morning.

Q Is there a sign also shown in the --

THE COURT: What day was it?

THE WITNESS: September 3, 1970.

Y MR. BOEHM:

Is there a sign also shown in that photograph -- I will strike that question.

THE COURT: I don't want to be facetious, but Kaufmann's weren't having one of their Golden Triangle sales that day, were they?

MR. BOEHM: I don't know, Judge. Not so far as I know.

MR. BOEHM:

I show you now what has been marked as Defendant's Exhibit B and ask you to tell me where that photograph was taken.

A At the same location from a different angle.

Q At what time of the day was it taken?

A Eleven-fifteen in the morning, August 24, 1970.

Q Is there a sign shown in that photograph?

A The sign that we made from our shop depicting the hour of the day and the month and the year shown.

Q Is there another sign also shown in the photograph?

A Yes, there is a sign that shows, "Sorry, filled."

It shows the hour, the day, the month and year.

MR. BOREMAN: Can you see this
(indicating), Judge, that it says "Sorry,
filled"?

THE COURT: Yes. It is over at the
other end of the garage but it is facing
in instead of out.

MR. BOREMAN: I just want to know if
you can read the letters on this. I know I
can't.

BY MR. BOEHM:

Q Now, do you know, Mr. Balzer, whether or not that sign
is put there so that traffic will not enter the garage?

MR. BOREMAN: May I hear the question
again?

MR. BOEHM: Does he know the purpose of the sign being placed there when the photograph was taken.

MR. BOREMAN: That is objected to, Your Honor. If a sign says, "Sorry, filled," you don't need a witness to tell you the purpose of the sign.

MR. BOEHM: Fine. We will make that part of the record. We can stipulate, then, that the sign was placed there?

MR. BOREMAN: We can't stipulate anything about the sign. I am just objecting to the question.

THE COURT: As I told you fellows yesterday, you have to leave something for the Court's imagination.

MR. BOEHM: We will strike that question, Your Honor.

THE COURT: All right.

MR. BOEHM: Would Your Honor like to see Exhibit B?

(The exhibit was handed to the Court.)

G. J. Balzer - Direct

(375) 389a

MR. BOEHM:

I show you now, Mr. Balzer, what has been marked as Defendant's Exhibit C and ask you at what location that was taken?

It's the same location showing the same condition.

MR. BOREMAN: I move to strike the word "condition." The testimony of the same location is not objected to.

THE COURT: All right, we will strike the word "condition." We have identified the exhibit as being the same location as the prior exhibit.

(EXCEPTION NOTED)

MR. BOEHM:

Mr. Balzer, I show you what has been marked as Defendant's Exhibit D and ask you if that photograph also shows the same location?

And that is a leading question.

MR. BOREMAN: I have no objection.

THE WITNESS: That's the same location.

MR. BOEHM:

What date was that picture taken?

10:45.

390a (376) G. J. Balzer - Direct

That is the time, right?

That is right.

Do you know what date it was taken?

The date is on the clock, the sign. Right at the present time I can't pick it out.

MR. BOREMAN: Do you know what date it is? Tell him. I have no objection.

THE WITNESS: I would imagine it was taken the same day.

MR. BOREMAN: All right.

THE WITNESS: All these pictures were.

MR. BOEHM: It was definitely August.

MR. BOREMAN: What is his testimony, August or September?

THE WITNESS: August.

MR. BOEHM: I can see "August" there without my glasses.

THE COURT: Yes, but it doesn't mention what year.

MR. BOEHM: See, (spelling) A-u-g.

MR. BOREMAN: Let us have the witness's testimony.

Do you or don't you know when it was

G. J. Balzer - Direct (377) 391a
taken? If you don't know, say so.

THE WITNESS: I don't know exactly when
the picture was taken.

BY MR. BOEHM:

Q Do you know what month it was taken?

A It was taken in August, and possibly a magnifying glass
will verify it.

Q I show you now what has been marked as Defendant's
Exhibit E and ask you if that is also a photograph
of the same location?

A Same location.

Q And the picture was taken at eleven-thirty on August
24, 1970, wasn't it?

A That's correct.

MR. BOREMAN: Quit leading the witness.

I object to the leading question.

Does it show that or doesn't it?

MR. BOEHM: Here (indicating) it is,
11:30, August --

MR. BOREMAN: Let him testify. What
date was it taken?

BY MR. BOEHM:

Q Mr. Balzer, does this photograph indicate at what time

392a (378) G. J. Balzer - Direct

the picture was taken?

A Yes, it does.

Q Does that photograph have a clock in it?

A It does.

Q And do the hands on the clock show what time of the day it was when the picture was taken?

A Yes, it does.

Q Will you please tell the Court what the clock says?

A Eleven-thirty.

Does the photograph have also on it --

MR. BOREMAN: Ask him when it was taken period.

We will save a lot of time, Your Honor.

MR. BOEHM: It is right there.

THE COURT: Ask him the question whether he knew whether the clock was operating or not. We have gone so far now we may as well play out the string and get totally ridiculous.

What was the date the picture was taken, if you know?

THE WITNESS: August 24, 1970.

THE COURT: Now, what is the next one?

G. J. Balzer - Direct

(379) 393a

MR. BOEHM: Exhibit F.

BY MR. BOEHM:

Q Mr. Balzer, tell the Court where the photograph was taken.

A Same location.

Q Do you know the time that this picture was taken?

A Eleven-thirty.

Q Was that taken at the entrance to the garage?

A That is correct.

Q What garage is that?

A That's at Kaufmann's garage, corner of Forbes and Cherry

Q Now, are they the only locations to date, Mr. Balzer --

MR. BOREMAN: Just a moment. So the

record may be clear, Your Honor, I want the record to show that I object to the admissibility of the pictures on the ground they are hearsay, improper identification. This witness did not take the pictures, and I think they are not qualified, he wasn't even there at the time. I want the record to show an objection.

THE COURT: We will overrule your objection and note the exception. We will

394a (380)

G. J. Balzer - Direct

permit the exhibits for whatever they may be worth. It is for the Court to decide the relevancy of them and the value of them. The Court is most familiar with that particular garage.

(EXCEPTION NOTED)

BY MR. BOEHM:

Were there, Mr. Balzer, in connection with your study which was just initiated in the latter part of August of this year photographs taken of any other locations?

No. We haven't got that far yet.

This was the first location that you selected, is that right?

That is correct.

THE COURT: Were there any exhibits taken of any of the garages of the Plaintiffs involved in this case, to your knowledge?

THE WITNESS: This is the only one that was taken. I don't know what garages were involved.

MR. BOEHM: The witness has already testified these pictures were not taken in

G. J. Balzer - Direct (381) 395a
connection with this lawsuit. This is a
study --

THE COURT: I am not concerned about
that phase of it. I was just questioning
what pictures he took, and I asked the
question as to whether or not any garages
of those involved in this lawsuit were
photographed.

MR. BOEHM: These were the only
pictures taken, Your Honor, just one garage.
There aren't any more at this time.

BY MR. BOEHM:

Is that right, Mr. Balzer?

That is correct.

Now, Mr. Balzer, also in connection with your study which
was initiated in the latter part of August of this year,
did you obtain information from the Bureau of Police
concerning the stationing of policemen at various
garages in the City of Pittsburgh?

MR. BOREMAN: That is objected to as
hearsay, what information he obtained from
police. He is not going to testify what

396a (382)

G. J. Balzer - Direct

policemen told him. Let us have the policeman. Let us have what he knows of his own knowledge, not what policemen told him. That is hearsay.

THE COURT: Be a little more specific, Counselor.

(EXCEPTION NOTED)

BY MR. BOEHM:

Q Did you request information from Lieutenant McMahon in conjunction with your study that you were making?

A Yes, I did.

Q What information did you ask Lieutenant McMahon to obtain for you?

A Where policemen were placed that were involved in aiding or helping to move traffic into or out of the parking lot.

Q And did Lieutenant McMahon reply to you in writing?

MR. BOREMAN: That is objected to, Your Honor, unless we know who Lieutenant McMahon is; and secondly, anything that Lieutenant McMahon either said or wrote is Lieutenant McMahon's testimony, not his. It is hearsay.

I have no opportunity to cross-examine
Lieutenant McMahon.

THE COURT: If you feel that is
relative, bring him in; but for the purpose of
this hearing we will overrule your objection
and note the exception. I am sure counsel
is going to tie all of this in. In
connection with his report he did the same
thing as your experts did in compiling
your information, and we didn't require the
auditors to come in.

(EXCEPTION NOTED)

MR. BOEHM: Or the newspapers.

THE COURT: You see, it works both ways,
Counselor.

MR. BOREMAN: Your Honor, the thing
that I had my expert testify to was the
figures. Now, what he is saying is
Lieutenant McMahon is going to give him an
opinion as to what traffic is --

THE COURT: The question that was put
was whether or not he asked Lieutenant
McMahon to give him information with respect

398a (384) G. J. Balzer - Direct

to the number of officers that were placed in an effort to aid traffic conditions at the various parking areas, as I understand the question.

MR. BOEHM: That is right, Your Honor.

MR. BOREMAN: The question was the number of officers that were placed with respect to traffic. I didn't understand him to say with respect to parking areas.

THE COURT: What I suggest is that you get in the groove here and follow the conversation. You anticipate too many things before you know what the question is.

Proceed.

(EXCEPTION NOTED)

MR. BOEHM: I will ask the question I last asked.

BY MR. BOEHM:

Q Did Lieutenant McMahon reply to you in writing?

A Yes, he did.

Q Do you have the written reply of Lieutenant McMahon with you in court?

A I do.

G. J. Balzer - Direct

(385) 399a

Q May I have it?

(It was handed to counsel.)

(Defendant's Exhibit G was marked for the purpose of identification.)

BY MR. BOEHM:

Q Has the written reply of Lieutenant McMahon been marked Exhibit G?

A Yes, it has.

Q What is the date of Lieutenant McMahon's report, Mr. Balzer?

A September 19, 1970.

Q 16?

A September 16, 1970.

Q And that is the date that is right on the report?

A That is correct.

Q Is that signed by Lieutenant McMahon?

A Yes, it is.

Q Do you remember when it was that you requested that information from him?

A September 15, 1970.

MR. BOEHM: I offer in evidence

Exhibit G.

MR. BOREMAN: If Your Honor please,

that is seriously objected to, for what that

report says I have a right to cross-examine

Lieutenant McMahon very thoroughly. I

seriously object to this being in evidence as pure hearsay and depriving me of my rights to cross-examine Lieutenant McMahon.

THE COURT: We will hold our ruling in abeyance until you bring in Lieutenant McMahon to authenticate his report and give you an opportunity to cross-examine him, if that is what you request.

MR. BOEHM: Okay.

MR. BOREMAN: Your Honor, these aren't matters of public records like the other statistics were. I think it is purely hearsay.

THE COURT: To a degree I concur in your thinking. By the same token, the compilation of that report and the statistics as indicated on that are no different than the compilation of the figures taken from the Plaintiffs' books and records and submitted to the gentlemen who made this overall Exhibit 1 that you

presented in court. There is no difference technically.

MR. BOREMAN: May I point out, Your Honor, there is quite a difference. The books and records are available to check whether these figures are right. We have nothing to check unless we get Lieutenant McMahon.

THE COURT: That is why I suggest to you if you request it we will have Lieutenant McMahon come in.

MR. BOREMAN: I do so request.

MR. BOEHM: We can do it, Your Honor, the same as Wilbur Smith could have been asked to come in in connection with his report, and we didn't even have the testimony from all of the people in connection with the --

MR. BOREMAN: There are no dates on that, there are no times on that. It's just a flat statement. The date of the report is dated September 16, but the times he stationed them there, how many policemen were there, where were they --

THE COURT: That is just a report of the number of policemen necessary at the respective

places that he suggests in his report.

MR. BOREMAN: It doesn't say whether they are there, Your Honor. You see, Your Honor, we are satisfied, we believe from actual experience that there were no policemen stationed in those places and our people so testified.

THE COURT: Are you making a request that the officer be brought in so you will have an opportunity to cross-examine him?

MR. BOREMAN: First I object to the evidence as hearsay. If Your Honor overrules me then I am making a request that the policemen come in.

THE COURT: We are not going to make a ruling on this until you have had an opportunity to cross-examine the witness, and then we will decide whether or not this exhibit is proper or improper.

MR. BOREMAN: Very well, Your Honor.

THE COURT: Are you making that request?

MR. BOREMAN: Yes, I am.

THE COURT: How soon can you get the

G. J. Balzer - Direct (389) 403a

officer here?

MR. BOEHM: We will try and have him here in five minutes, Your Honor. My co-counsel will request that he appear immediately.

THE COURT: I suggest that you proceed with some other phase of the examination of Mr. Balzer and we will pick up this latter phase when the officer gets here.

MR. BOEHM:

From your experience in the Bureau of Traffic Planning and particularly in connection with your studies initiated in the latter part of August, would you tell the Court why, assuming that that information is properly authenticated, those policemen are placed at those locations?

MR. BOREMAN: That is objected to, Your Honor, until the preliminary matter is disposed of that Your Honor indicated.

I think any questions related to that exhibit are improper at this time.

MR. BOEHM: I will withdraw it.

BY MR. BOEHM:

Q Do you know, Mr. Balzer, anything of the functions of a traffic policeman at an intersection in the City of Pittsburgh in the vicinity of a parking garage?

A Yes, I do.

Q Would you tell the Court what you know about that?

A Generally a policeman is placed on the intersection to keep the traffic moving and the intersection clear.

And if necessary he will move down to let some of the parking lots unload or load, whichever time it may be, while he's working the intersection.

Q Do you know in fact whether or not policemen stationed at intersections actually do this, move to the garage?

A They do at times, yes, to try to clear the congestion.

Q Let us take the intersection of Forbes and Cherry where the photographs were taken.

Is there a problem of congestion at that intersection to your knowledge?

A There is.

Q Why is that?

A Mainly due to the cars wanting to get into the parking garage.

Q Mr. Balzer, did you at my request in connection with this

G. J. Balzer - Direct

(391) 405a

Is suit presently being tried before His Honor Judge
Wassal obtain some figures as to the cost to the
City of Pittsburgh with respect to traffic policemen
employed per day?

Yes, I did.

Do you have those figures with you?

I took them over the phone. I have the figures.

From whom did you obtain those figures?

I obtained these figures from Lieutenant Jordan of the
Police Department.

MR. BOEHM: Do you want him to --

MR. BOREMAN: Are these public records?

MR. BOEHM: I would think they are. I
think they would be reflected in the budget.

MR. BOREMAN: Yes, I would like
Lieutenant Jordan here to cross-examine him.

MR. MARKS: Your Honor, I am sorry to
interrupt, but you have this witness who has
testified to photographs which he didn't take
at a time when he wasn't there, and now he has
testified about statistics that he didn't
compile, that was the second thing. Now he is
testifying about a telephone conversation about

statistics that another man compiled, and in all three of these instances he didn't do anything except speak to somebody else who did the work and just copy down what they said. I don't see how the Plaintiffs can be expected to cross-examine this man on any of that because he didn't do any of that. All he says is that is what the fellow told him.

THE COURT: You are quite right.

MR. BOEHM: I agree, Your Honor, but what we have here is an expert who has made a study and obtained information. Now, I can bring everyone in that he obtained the information from, but I think the Court should take into consideration that it does take time to do that and also Mr. McNeil came here prepared with all kinds of statistics, got his information from various sources, some of them including some place in the Department of Safety, and the Court accepted that testimony without requiring the gentlemen. As a matter of fact, the Court got a little bit upset with me in even pursuing the line of information

to where the information was obtained.

But I think if they have a right to bring in every man from whom that information was obtained then I have a right to bring in that man that Mr. McNeil contacted.

THE COURT: You had that right if you requested it, but you didn't.

MR. BOEHM: All I really wanted to know was where he got the information and I couldn't even find that out without the Court telling me I had better pursue some other line of examination.

MR. BOREMAN: If we want to know the number of policemen, that should be a very simple matter.

THE COURT: Gentlemen, certainly we understand that all of this and the approach to this was on the basis of more or less expert testimony so that we could alleviate bringing in a lot of the individuals that went into the ultimate report or at least their work and their thinking and their discussions and their recommendations, whatever they may have been. We appreciate that in an effort

to save time and get to the meat of this case.

But by the same token, in the interest of justice, if either side or both request that those who were involved in the compilation of these reports and the information that is germane to the issues involved in this case, then the Court is compelled to abide by their request and have those witnesses presented.

If you ask that those witnesses be here --

MR. BOREMAN: Yes, Your Honor, I do.

THE COURT: I will honor your request.

MR. BOREMAN: Because this is the crux of this case, the very crux of it.

THE COURT: We would have obliged you, Counselor, had you made such a request.

MR. BOEHM: I didn't even know who to ask for, Judge. I couldn't find out.

MR. BOREMAN: In the case of the figures, Your Honor, we would have to have a mountain full of papers and accountants, and the case of Lieutenant Jordan is one man.

MR. BOEHM: All right, he will be next after McMahon.

G. J. Balzer - Direct (395) 409a

THE COURT: Who are you requesting here so that I don't get lost in the scuffle?

MR. BOREMAN: Lieutenant McMahon and now Lieutenant Jordan, as I heard the names.

MR. BOEHM: It is going to be difficult if Lieutenant Jordan says he called somebody. We will try. We will bring in the person he called then.

MR. BOEHM:

Mr. Balzer, did you have an opportunity to review the -- Do you know what the Wilbur Smith report says concerning the deficiency of parking spaces with respect to the supply of spaces in the city? Did you make a note of the items mentioned in it?

I did. In 1955 there were 14,830 spaces of which at that time there was a deficiency of 2400 spaces. In 1969 from Wilbur Smith's report there were 24,325 spaces with a deficiency of around 4700 spaces.

So that as the supply increased so did the deficiency?

That is correct.

Do you know whether or not today there is an existing deficiency of parking spaces in the City of Pittsburgh?

There is in the downtown area, yes.

Q Do you know what number we are in need of or what the deficient number is in the city today?

A From the Wilbur Smith study he gives a figure of around 4700 cars.

Q Mr. Balzer, do you know during what months of the year the traffic volume is highest in the city?

A The months of September, October, November, December are high. January and February usually into March are --

Q Which are the highest?

A The latter months of the year.

Q September to December?

A Right.

Q The latter months, is that what you said?

A Yes.

Q Do you know why that is?

A Well, there's several reasons for it. The summer months are vacation months, for one reason, and people are away on vacation. In September it picks up because everybody is back from vacation, the schools are starting, people - colleges are opening. Then we have the attraction to the downtown area for business due to Christmas, so forth.

Mr. Balzer, do you have with you a 1963 study which was made of traffic conditions in the central business district

